



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 20-03669
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: Brittany Forrester, Esq.

06/24/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Eligibility for access to classified information is granted.

Statement of the Case

On January 24, 2021, the Defense Counterintelligence and Security Agency issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on July 7, 2021, and requested a hearing before an administrative judge. The case was assigned to me on April 8, 2022. The Defense Office

of Hearings and Appeals (DOHA) issued a notice of hearing on April 22, 2022, scheduling the hearing for May 24, 2022. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 6 . Applicant offered Applicant Exhibits (AE) A through U. There were no objections and all exhibits were admitted into evidence. Applicant testified on his own behalf. DOHA received the hearing transcript on June 9, 2022.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.h and denied ¶¶ 2.a and 2.b. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 52 years old. He served in the military from 1988 to 1992, deployed during Operations Desert Shield and Desert Storm, and was honorably discharged. He earned an associate degree in 1994. He has three children ages 27, 21, and 17. He was married from 2003 to 2013. Applicant has owned his own business since 2005. He has accepted a job with a federal contractor. He will continue to own his business, but it will be managed by someone else. (Tr. 15-19)

In 2015, Applicant's business was burned. The losses from the fire included a building, vehicles, tools and records that were used to conduct his business. All of the assets associated with the business were destroyed by the fire. It was determined the fire was set by arsonists and was racially motivated with slurs written on the building. The debts alleged in the SOR were accounts associated with his business. He was the sole owner of the business and was unable to pay the accounts at the time, but stated he was responsible for them and intended to pay them. After the fire, he contacted many of his creditors and used his savings to pay many of his debts, but could not afford to pay all of them at that time. He paid many debts that were not alleged in the SOR. He paid down some of the amounts owed in the accounts to show he was making a good-faith effort to resolve them even if he was unable to make the full payment. He did not want the creditors to think he had abandoned the debts. He was able to refinance his home in 2022 in order to pay some of the remaining debts. (Tr. 17-19, 43-44, 56)

The debts alleged are corroborated by Applicant's admissions, statements, and credit reports from March 2020, October 2020, and May 2022. (GE 1, 2, 3, 4, 5)

Applicant has paid the debts alleged in SOR ¶¶ 1.b (\$18,446-AE A); 1.c (\$4,527-AE B); 1.d (\$887-AE C); 1.e (\$386-AE D); 1.f (\$92-AE E); and 1.g (\$165-AE F). These debts are resolved. The debt in SOR ¶ 1.a (\$39,195-AE H) is enrolled in a payment plan and Applicant has been making payments of approximately \$800 a month since October 2021. SOR ¶ 1.a is being resolved. (Tr. 20-29, 41-42, 44-49)

After the fire, the insurance company refused to pay for the losses, and Applicant filed a lawsuit. Before the judgment was entered the bank where Applicant obtained his loan requested the Small Business Administration(SBA) pay the portion of the loan that it

had backed when Applicant received the loan. (SOR 1.h-\$71,974) The SBA paid \$71,974 to the bank. Later, a summary judgment was entered for Applicant and it ordered the insurer to pay the total amount of the loan to the bank, which they did. The bank was then required to return the \$71,874 to the SBA, which it did. Applicant disputed the debt in SOR ¶ 1.h with the credit bureau and it was deleted. This debt is resolved. (Tr. 29-34, 49-51; AE G, I)

Applicant testified that he has no new financial delinquencies, his finances are stable and he has participated in credit counseling. (Tr. 46, 53; AE H)

Applicant credibly testified that when he completed his security clearance application (SCA) in January 2020, he believed he had to only disclose his personal debts. He did not think he had to disclose his business debts and did not disclose those that are alleged in the SOR. He testified he did not deliberately fail to disclose or attempt to hide his debts. He acknowledges he made a mistake. I found his explanation credible. (Tr. 35, 51-53)

Applicant did not disclose in his SCA that he had been charged in about May 2007 with felony aggravated assault, felony aggravated battery, and felony possession of a firearm or knife during the commission of or attempted to commit certain felonies. He was required to disclose if he had ever been charged with any felony offense, to which he answered "no." (Tr. 36-39, 51-53)

Applicant testified that in 2007 he was involved in altercation and was protecting his family from bodily harm. He was licensed to carry a weapon and he discharged it. He was arrested and was permitted to participate in a first offender program, which deferred adjudication. He successfully completed the program. Applicant credibly testified that the judge told him the status of the charge would be like it never happened. Applicant relied on what he was told by the judge when he completed his SCA and did not disclose his felony arrest. (Tr. 35-39) The Order of Discharge from the State ordered:

The defendant be discharged without adjudication of guilt;

That this discharge shall completely exonerate the defendant of any criminal purpose;

That this discharge shall not affect any of said defendant's civil rights or liberties;

The defendant shall not be considered to have a criminal conviction; and

This discharge may not be used to disqualify a person in any application for employment or appointment to office in either the public or private sector.
(Answer to the SOR)

Applicant further testified that he did not deliberately or intentionally fail to disclose his felony arrest, but honestly did not believe he was required to disclose it based on what he had been previously been told. He acknowledges that he made a mistake. I found his explanation credible. (Tr. 36-39, 51-53)

Applicant holds a state license to work in his specialized area of construction and also has various certifications. He provided a copy of his resume and an award he received. He provided a character letter that describes him as intelligent, hard-working, dedicated, and trustworthy. He is considered a team-player, who is a leader and a person of integrity. (Tr. 39-40; AE M O, Q, R, S, U)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk

that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had eight delinquent debts totaling approximately \$135,572 that began accumulating in 2015 when his business was burned down by arsonists in a racially motivated crime and he was unable to pay the accounts. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's successful business was destroyed, along with his assets to run the business, when his building was intentionally set on fire by arsonists. The debts alleged in the SOR were business debts. Applicant has paid many debts not reflected in the SOR and he has resolved all but one debt in the SOR. The sole remaining debt, in SOR ¶ 1.a, is being paid through a payment plan. Applicant's financial problems occurred for reasons beyond his control and he has acted responsibly under the circumstances. Future financial problems are unlikely to recur. He has participated in financial counseling and there are clear indications his financial problems are under control. He has paid almost all of his delinquent debts and is in a payment plan for the remaining debt. All of the above mitigating conditions apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concerns for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

I have considered all of the evidence and conclude that Applicant did not deliberately fail to disclose in his SCA his delinquent debts. I found his explanation credible that he did not believe he had to disclose his business debts, and he did not deliberately fail to disclose the information. I also found his testimony credible that based on the order from his state's court regarding his felony charge and what he was told by the judge that he legitimately believed his felony charges did not need to be disclosed. I find Applicant did not deliberately fail to provide information on his SCA that was required. I find in his favor on Guideline E, personal conduct.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Applicant met his burden of persuasion. He has paid most of his delinquent debts and has a payment plan for the remaining debt, and he rebutted the allegations of deliberate falsification. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns arising

under Guideline F, financial considerations and refuted the Guideline E, personal conduct allegations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.h:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge