



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



In the matter of:)
)
) ISCR Case No. 21-01182
)
Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

09/02/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 16, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on July 13, 2021, and requested a hearing before an administrative judge. The case was assigned to me on April 4, 2022.

The hearing was originally scheduled for May 26, 2022, but it was continued at Applicant's request. The hearing convened as rescheduled on August 12, 2022. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through O, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE P through R (the exhibits consist of an email and two documents) and admitted without objection.

Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. He has worked for defense contractors since 1999, and for his current employer since 2006. He seeks to retain a security clearance, which he has held for more than 20 years. He is a high school graduate, and he earned technical certifications. He married in 2012. He and his wife have a child, and he has a child from a previous relationship. (Tr. at 13, 20-22, 28-30; Applicant's response to SOR; GE 1, 2)

The SOR alleges six delinquent debts totaling about \$133,661. The debts are established through credit reports and Applicant's admissions.

A number of factors contributed to Applicant's financial problems. He had a costly nine-year custody battle with the mother of his oldest child. His wife has significant medical and mental health issues that have prevented her from working. Her condition required the purchase of items totaling about \$2,000 per month. The items were not reimbursable by medical insurance. Both of his children required counseling to deal with sexual and emotional abuse, which was not inflicted by Applicant or his wife. He also assisted with the expenses related to his brother-in-law's unexpected passing in 2018. (Tr. at 13, 21-27, 35, 46-48, 56; Applicant's response to SOR: GE 4; AE D, J-O)

Applicant filed a Chapter 13 bankruptcy case in June 2021. Under Schedule D, Creditors Who Have Claims Secured by Property, the petition listed a \$143,065 mortgage loan (the house was valued at \$190,327). Under Schedule E/F, Creditors Who Have Unsecured Claims, there were no priority unsecured claims. Nonpriority unsecured claims totaled \$133,711. The six SOR debts are listed in the bankruptcy petition. (Tr. at 52-53; Applicant's response to SOR; GE 5; AE E)

The Chapter 13 bankruptcy plan has not yet been approved, but Applicant has been making monthly payments in anticipation of its approval. He made ten payments of \$1,750 between July 2021 and March 2022, and five payments of \$1,757 between April 2022 and August 2022, for a total amount paid during that period of \$26,285. He pays his mortgage loan outside the plan. He intends to continue making payments into the Chapter 13 bankruptcy unless the court approves a plan that is much greater than he is currently paying and completely unaffordable. (Tr. at 25, 39-45, 54, 57-59; GE 5; AE F, P-R)

Applicant's current finances are better. He lives a frugal lifestyle. His wife is in counseling to deal with her issues. The collateral expenses related to her condition have greatly declined. He received financial counseling as a requirement of his bankruptcy. (Tr. at 24-25, 36-45, 49, 55, 59-60; Applicant's response to SOR; GE 5; AE J, K)

Applicant submitted letters attesting to his exceptional job performance and strong moral character. He is praised for his trustworthiness, reliability, professionalism, work ethic, honesty, honor, patriotism, frugality, and integrity. He is recommended for a security clearance. (AE A-C)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has a history of financial problems, including multiple delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and

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

Applicant's financial problems resulted from a number of conditions that were beyond his control: a costly nine-year custody battle; his wife's significant medical and mental health issues; his brother-in-law's unexpected passing; and the sexual and emotional abuse perpetrated upon his children.

Applicant went through trying times. He did not seek a Chapter 7 bankruptcy to avoid paying his debts. He filed a Chapter 13 wage earner's bankruptcy case that will enable him to pay his creditors an amount that the bankruptcy court deems appropriate for his situation. He made 15 payments of about \$1,750 between July 2021 and August 2022, for a total amount paid during that period of \$26,285.

Applicant acted responsibly under the circumstances and made a good-faith effort to pay his debts. His finances do not cast doubt on his current judgment, reliability, trustworthiness, and ability to protect classified information. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are applicable. Security concerns about Applicant's finances are mitigated.

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 relevant 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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

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.f: For Applicant

Conclusion

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge