



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



In the matter of:)	
)	
)	ISCR Case No. 12-05487
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Kristen Siegwart, Esq.

04/28/2016

Decision

CERVI, Gregg A., Administrative Judge:

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

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86) on November 14, 2011. On October 19, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on November 14, 2015, and requested a hearing before an administrative judge. The case was assigned to me on February 25, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing

on March 4, 2016, and a hearing was scheduled for March 31, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through P, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 8, 2016.

Findings of Fact

The SOR alleged two delinquent debts, including a federal tax debt totaling approximately \$37,996 for tax years 2008-2011, and a state tax debt totaling approximately \$24,304 for tax years 1999-2013. Applicant denied each SOR allegation, explaining that the amounts owed were substantially reduced because he had been paying them down since 2013. He submitted supporting documents with his Answer. After a careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 67 years old and is employed by a government contractor since 2001.¹ He graduated from a U.S. military service academy in 1971. He subsequently was awarded two master's degrees, the last, a Master of Business Administration (MBA) in 1992. He honorably served for 20 years in the United States Marine Corps, retiring in 1991. He currently holds a DOD security clearance and is requesting that it be renewed. Applicant married in 1972 and divorced in 2000. He has six adult children. His oldest daughter died in a tragic accident in 2003.

Applicant's financial problems that substantially led to his federal and state tax delinquencies began in approximately 1999 when he struggled financially after his separation and subsequent divorce in 2000. Applicant was obligated by his divorce decree to pay alimony, child support, and a portion of his military retirement pay. Applicant's spouse often made unexpected requests for additional money beyond his legal requirement, to pay the mortgage, utilities, home repairs, child expenses, and medical and dental bills, including after the children were too old to be covered by his medical insurance. Many of these extra obligations were demanded from his ex-spouse after they were past due, and involved additional late fees. Applicant felt a responsibility to ensure his ex-spouse, children and a grandchild living with his ex-spouse would not lose the home they lived in, and that all extra expenses for the family were covered, despite his legal obligation. At the time, Applicant did not have the resources for these extra payments, and as a result, juggled his payments to fit his income stream and accumulated credit card debt to pay family expenses.

The additional costs to support his family snowballed over a period of years as Applicant found it difficult to make payments for his family while meeting his own expenses, even though he lived for six months with relatives or friends, then in a low-cost room for five years. He described himself during this period as depressed, overwhelmed, and he did not see a way out of his financial situation. Additionally, he suffered emotionally beginning in 2003 when his oldest daughter died in a tragic

¹ Applicant has worked in the same position but with a previous contractor since 1998.

accident and both of his parents died the same year. By 2005, Applicant became concerned about his credit card debts and demands for payment from creditors. He sought the advice of counsel by use of the legal plan offered by his employer, who recommended filing Chapter 7 bankruptcy.² The bankruptcy was filed in 2005. In 2006, the Court discharged approximately \$50,000 to \$60,000 of debt, possibly including some income tax liabilities.

From approximately 2008 to 2010, Applicant's spouse continued to demand money for major household repairs. Applicant liquidated two 401k retirement accounts that were awarded to his spouse in the divorce decree, incurring penalties for early withdrawal. Applicant failed to pay income tax obligations because of the substantial increase in tax owed from these early withdrawals. In 2011, Applicant had a stroke, which impaired his ability to walk and speak. At the urging of his family, he moved into an apartment with his son and shares the housing expenses.

In 2012, Applicant was notified by the Internal Revenue Service (IRS) of his delinquent tax debts from 2008-2011. He met with an IRS representative in 2012, provided additional information they requested, and arranged an installment plan to satisfy his tax obligations over time. Additionally, he also met with state tax authorities, negotiated a reduction in his tax debt and began a similar annual installment repayment plan that has been renewed twice.³ At the same time, Applicant negotiated a pay increase from his employer to achieve pay parity for his position and to assist him with making the required tax payments. Applicant has been making regular monthly payments as required by these plans since 2013. He pays \$12,000 per year toward tax debt reduction. His current federal debt has been reduced to approximately \$20,468, while his state debt has been reduced to approximately \$7,200. At the current rate, Applicant's total tax debts will be paid in full in 2.5 years.

Applicant's income has increased substantially since 2008. He currently earns approximately \$165,000 annually.⁴ He is current on all debts and expenses, increased the tax withholding from his pay to cover taxes owed to ensure he does not fall behind again, is current on all of his income tax return filings, and has been making regular payments toward his federal and state tax debt obligations. His current credit bureau report (CBR) shows no new delinquencies. He now closely manages his finances and tracks each bill to ensure they are paid on time, and his personal financial statement (PFS) supports his contention that his finances are under control.⁵ He lives a frugal lifestyle, abstaining from vacations and dating.⁶ His performance evaluations over the

² Tr. 38-44. The bankruptcy is not alleged in the SOR.

³ Applicant testified that if he failed to pay his monthly installments, the installment agreement would be terminated and the total amount owed would become due and payable.

⁴ AE D.

⁵ GE 2.

⁶ Tr. 48.

past five years are excellent.⁷ He provided letters of recommendation from a law professor who has been a lifelong friend, a co-worker and his military client and contractor supervisors, attesting to his trustworthiness, loyalty, experience and integrity.⁸

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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(a), 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.

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 clearance decision.⁹ In *Department of Navy v. Egan*¹⁰, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹¹

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, "the clearly consistent standard indicates that security clearance determinations

⁷ AE G-K.

⁸ AE L-O.

⁹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁰ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹¹ *Egan*, 484 U.S. at 531.

should err, if they must, on the side of denials.” Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.¹²

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 or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal 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 or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations.

Applicant failed to pay his federal and state income taxes on time. The evidence is sufficient to raise the above disqualifying conditions.

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

¹² *Egan*, 484 U.S. at 531.

doubt on the individual's current reliability, trustworthiness, or good judgment;

(c) the person has received or is receiving counseling for the problem, and/or there are clear indications that the problem is being resolved or is under control; and

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

Applicant attributes his past financial difficulties to a period where he was overextended due to a separation and divorce, and extraordinary costs associated with his ex-spouse and his children's needs. He has since worked steadily to improve his financial condition, and is well on his way to paying his tax delinquency through state and IRS-approved payment plans. He has worked in his current position supporting a military service program since 1998. His income has increased by a significant amount since 2012. He appears to have sufficient income to meet his financial obligations, including continuing to pay his tax arrears. He is current on all tax returns and his recent CBR shows that he is current on all other financial obligations and has established a significant track record of timely payment of his tax debts.

There is sufficient evidence to determine that Applicant's financial obligations have been or are being resolved. I am persuaded that he acted responsibly under the circumstances to take action to address his debts once he was financially solvent, and is making significant progress on his tax obligations. I am convinced that he will continue his efforts to stay financially solvent and will address his future financial obligations in a responsible manner. Financial concerns are mitigated under AG ¶¶ 20(a), 20(c), and 20(d).

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(a):

(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 all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis. I have also considered Applicant's stable work history, positive personal and employment recommendations and evaluations, and efforts taken to address his debts and take control of his finances. Applicant established a plan to resolve his financial problems and has taken significant actions to implement that plan.¹³

Overall, the record evidence leaves me without questions or doubts as to 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.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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Gregg A. Cervi
Administrative Judge

¹³ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).