



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



In the matter of:)	
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)	
)	ISCR Case No. 12-10504
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

04/24/2014

Decision

LYNCH, Noreen, A., Administrative Judge:

On November 27, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 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 in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on February 21, 2014, and was scheduled for March 21, 2014. However, the hearing was cancelled for that date and rescheduled for April 11, 2014. A notice of hearing was issued on March 21, 2014, scheduling the hearing for April 11, 2014. Hearing EX I, Informational Letter and Enclosure (DOD Directive 5220.6), was entered into the record. Government Exhibits (GX) 1-10 were admitted into evidence without objection. Applicant testified, presented the testimony of four witnesses, and submitted Applicant Exhibits (AX) A-G, which were admitted into the record without objection. The transcript (Tr.) was received on April 17,

2014. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted an indebtedness to the IRS, but denied the factual allegations for past-due child support obligations, with explanation.

Applicant is a 50-year-old prospective employee of a defense contractor.¹ He graduated from high school in 1982 and has attended college at night while working during the day. He served on active duty in the United States Air Force from October 1982 until October 1992, receiving an honorable discharge. In 2001, Applicant married, but since 2003, he has been divorced. He has two children. Applicant was with his former employer since October 2011. (GX 1) He held a security clearance in the military and while a contractor since 2006.

The SOR alleges a indebtedness to the IRS for unpaid income taxes for the year 2011, in the amount of \$24,444.00; a past-due child support obligation in the amount of \$3,176; and a past-due child support obligation in the amount of \$7,772.00.

After Applicant left military service, he became a police officer. He worked full-time as a county police officer from January 1995. He was injured in a police shooting incident and was forced to retire early in November 2005. (AX F) Due to the medical disability, he did not work for approximately one year. (GX 10) He supported himself with his retirement pay until 2006. He never sought unemployment wages. In 2006, Applicant sought gainful employment but was not always successful. (GX 2) His financial difficulties began as the result of his reduced income due to the early retirement from the police. He did not have gainful employment for approximately one year. He became delinquent on several accounts. He has since paid these non-SOR debts. (GX 4)

Applicant began employment with a federal defense contractor in early 2007. He worked as a consultant on various contracts. When a contract would end, he would usually find immediate employment. However, some contracts were for a few months or paid a lesser salary.

In 2011, he began to encounter some financial difficulties due to illness of his mother. (AX A) As the only son, he was responsible for her care. She was in a skilled nursing center but when the Medicare funding ended, Applicant took her home with him. He had to find a rehabilitation center for her. He paid for her care. The money that Applicant had saved when he was working on contracts was exhausted due to her health issues. Also, for the year 2011, Applicant was working as an independent contractor and no taxes were withheld. Thus, the money that Applicant had for paying

¹Applicant's former employer is sponsoring him for the security clearance. Applicant worked for the company until October 2013, but had to leave when the security issue arose. His former employer testified that they stand ready to hire Applicant immediately.

federal tax were exhausted. Applicant never had any problems with his taxes before his mother's illness. His mother died in 2013. Applicant was responsible for her funeral expenses.

As a result, Applicant owed back taxes to the IRS. He contacted the IRS to resolve the issue. (GX 3, 5) He was given a choice to make an offer in compromise or a payment schedule. Applicant had recently lost the contract that he was working on and did not have a sufficient amount to make an initial payment for a payment plan. He completed a form in December 2013 to make an offer in compromise. Due to his income level, he qualified for an amount of \$7,545. He explained on the form that he was not working and did not have sufficient funds to include the application fee. The form was returned to Applicant. (AX B) He stands ready to resubmit the offer in compromise or start a payment plan. Naturally, this depends on his full employment. (Tr. 62) When Applicant contacted the IRS by phone, they informed him to immediately contact them when he returns to work to restart the process.

Applicant disclosed on his 2012 security clearance application that he again encountered some financial issues regarding a child custody case for his two children. A child was born in 2003. In 2006, a court ordered child support in the monthly amount of \$1,082. Applicant has consistently paid the amount. Another child was born in 2008. Applicant's child support obligation is \$955. In 2013, as a result of Applicant's decrease in income, he motioned the court to modify. (AX C) The hearing is May 2014.

Applicant provided documentation from two different state child support agencies that he has a payment history for his child support obligations. (AX D, E) He is current with his accounts. He did not stop making his child support payments at any time. In fact, the one account is automatically deducted from his medical disability pension. (Tr. 68) Applicant paid any arrears from 2007. The documentation shows that his last payment was February 2014.

Applicant's last contract position paid an annual salary of \$65,000. He receives approximately \$2,270 monthly from his medical disability pension. After expenses and child support obligations, his net monthly remainder is about \$565. He is current on his monthly expenses. He has a retirement savings plan. He has no new debts. His early credit reports reflect that he has accounts that are paid as agreed. (GX 9)

Applicant was candid and forthright. He testified that he has not ignored his creditors. He modified his home mortgage to save money. He has had some financial counseling through the modification program. He always saved money to use when a contract ended. His mother's illness and his medical disability were beyond his control. He has always pursued employment. In fact, he has had scheduled interviews during the security clearance process. (Tr. 78) He provided documentation that he may be offered a position very shortly. (AX G) His former employer stands ready to employ him. He was also candid that he has borrowed some money from family and friends until his employment begins. (Tr. 93)

Applicant's colleague testified that Applicant is reliable and a team player. Applicant is conscientious in his work and has shown he is a trustworthy, knowledgeable individual in dealing with sensitive matters. (Tr. 27)

The CEO of a contracting company testified that he has known Applicant since 2009. He describes Applicant as an exceptional person who has been a top performer. (Tr.32) Applicant is one of the leaders of a team of experts. The CEO acknowledged that Applicant has never had any type of security issue. The CEO testified that in 2013 a contract came to an end and since then Applicant has been on hold. The clients are eager for Applicant to work on their contracts. (Tr. 37)

Another colleague testified that she has known Applicant since 2009. She is aware of the security concerns, but recommends Applicant for his security clearance. Applicant is described as a dedicated worker. (Tr. 30)

Applicant's manager testified that in his daily relationship with Applicant, he has observed Applicant's attitude and behavior under pressure. Applicant was the utmost professional with a determined work ethic. He was trustworthy and diligent adhering to all policy. (Tr. 44)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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 access to classified information will be resolved in favor of 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect 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 Executive Order 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant owes the IRS for unpaid taxes for the year 2011 and had past-due child support obligations for his two children. Consequently, the evidence is sufficient to raise disqualifying conditions in ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(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;

(d) the individual initiated 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 unemployment, underemployment, medical disability, and his mother's illness have conspired to cause financial difficulties over the years since 2006. These were events beyond his control. His early retirement from the police and medical situation also contributed to his financial problems. He saved his money and was not extravagant. He has consistently paid his bills and obligations. He has made good-faith efforts to repay overdue bills. He provided documentation to substantiate that the child support payment plan is current. He received financial counseling as a result of the home loan modification. Applicant stands ready with his original plan for an offer in compromise with the IRS. The IRS told Applicant to contact them when he has employment. His former employer stands ready with a contract. Applicant is in serious job interviews and has a clear opportunity for another job. With steady employment, Applicant has his financial issues under control. He has acted quite responsibly given all the circumstances beyond his control. AG ¶¶ 20(b), (d) and (c) apply.

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is 50 years old and has worked in the defense contracting field. He served in the military and received an honorable discharge. Applicant worked as a police officer, but had his career cut short due to a shooting incident. He was forced to retire on disability. He went to school and trained in information technology. He has excellent recommendations from his peers and employers.

Applicant cared for his mother and despite his savings was unable to pay his federal taxes for 2011. He contacted the IRS and stands ready to make his offer in compromise. He is divorced. He has two children for whom he has provided child support. Despite difficult times, he is current on his child support obligations. I have no doubts about his ability to satisfy his delinquent debts. Applicant submitted post-hearing information concerning his job opportunity. That coupled with the fact that his former employer stands ready to hire him provides him will provide with a steady income. He has the resolve to remain steadfast. He has shown that in the past. I have considered the information for mitigation purposes. Applicant has met his burden of proof to mitigate 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.c:	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 continue Applicant's security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge