



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



In the matter of:)	
)	
)	ISCR Case No. 13-01019
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel	
For Applicant:	, Personal Representative

02/21/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On October 23, 2013, 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 submitted a notarized response to the SOR on November 13, 2013, and requested a hearing before an administrative judge. The case was assigned to me on January 10, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 16, 2014, scheduling the hearing for February 4, 2014. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were

admitted in evidence without objection. Applicant testified and called a witness, but he did not submit any documentary evidence. The record was held open for Applicant to submit additional information. He submitted documents that were marked Applicant's Exhibits (AE) A through G and admitted without objection. E-mail correspondence regarding the submission is marked Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on February 12, 2014.

Findings of Fact

Applicant is a 48-year-old chief executive officer (CEO) of a defense contractor. He seeks to retain his security clearance. He has a bachelor's degree. He is married with four children who are teenagers or younger.¹

Applicant owned a small business until 2007, when it merged with another company. It still qualifies as a small business for government-contracting purposes. The company has faced challenges in the last few years, including federal budget cuts, sequestration, and the loss of several contracts. Applicant's salary from the company significantly decreased because of the business downturn. Applicant's father-in-law and one of Applicant's children had serious medical conditions requiring hospitalization. His father-in-law was moved to an assisted-living facility after his hospitalization. Applicant did not state that he had extensive medical costs, but he missed an "enormous amount of work" and "numerous hours of productivity." He was unable to pay all his personal bills, and several debts became delinquent.²

The SOR alleges three delinquent debts to financial institutions, for \$2,936 (SOR ¶ 1.a); \$61,000 (SOR ¶ 1.b); and \$15,000 (SOR ¶ 1.c). Applicant admitted owing the debts, and all of the debts appear on at least one credit report.³

Applicant admitted owing the \$61,000 debt alleged in SOR ¶ 1.b, but he testified the debt was opened by his wife without his knowledge, and it is solely in her name. The debt is listed by TransUnion on the August 2012 credit report, but it reports that Applicant is not the owner of the account and that he is only an authorized user of the account. The balance of the debt at that time was \$64,257. The June 2013 Equifax credit report also lists Applicant as an authorized user of the account. The balance was reported as \$61,000. Applicant is not personally liable for the debt, but since his wife incurred the debt, he feels obligated to pay it. He has been paying \$350 per month toward the debt for about 18 months.⁴

Applicant is repaying a home equity loan that was past due at one time. The home equity loan is not alleged in the SOR because he was able to bring it into a

¹ Tr. at 24-25, 59-61; GE 1, 2; AE A.

² Tr. at 24-28, 40-50, 62-64; GE 1, 2; AE A-C.

³ Applicant's response to SOR; GE 1-5.

⁴ Tr. at 35-39, 51-55; Applicant's response to SOR GE 1-5; AE A, G.

current status. Applicant has not paid the \$2,936 debt alleged in SOR ¶ 1.a or the \$15,000 debt alleged in SOR ¶ 1.c. He plans to start repaying the debts within the next few months. He expects to have the debts paid by 2015.⁵

The president of Applicant's company suggested to Applicant that he file bankruptcy. Applicant rejected bankruptcy because he feels he has a moral obligation to pay his debts. Applicant and his company's president both testified that their business is doing better. They have been awarded new contracts and expect an upsurge in business within the next several months. Applicant's 2013 W-2 form indicates that his salary has more than doubled since 2012. He credibly testified that he plans to pay all his delinquent debts. He has not received formal financial counseling, but he has discussed his finances with his business partner and with several friends and neighbors who have expertise in finances.⁶

Applicant's business partner, who is also their company's president and facility security officer, testified to Applicant's judgment, reliability, trustworthiness, and honesty.⁷

Policies

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 access to classified information will be resolved in favor of 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,

⁵ Tr. at 50-51, 56-57; Applicant's response to SOR; GE 1-5; AE A, F.

⁶ Tr. at 28-35, 38, 64-66; Applicant's response to SOR; AE A, D, E.

⁷ Tr. at 64-69.

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 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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate 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, 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; and

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

Applicant's company suffered a business downturn due to federal budget cuts, sequestration, and the loss of several contracts. He also had medical problems in his family that caused him to miss an "enormous amount of work" and "numerous hours of productivity." Those events were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant has been working to resolve his financial problems. He brought his home equity loan current. The evidence does not establish that Applicant is personally liable for the \$61,000 debt alleged in SOR ¶ 1.b. However, Applicant realizes that it is part of his family's financial responsibilities, and he has been paying \$350 toward the debt for about 18 months. His business is improving, and it has been awarded some new contracts. He credibly testified that he plans to pay all his delinquent debts. He plans to start repaying the debts alleged in SOR ¶¶ 1.a and 1.c within the next few months, and he expects to have the debts paid by 2015.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that Applicant acted responsibly under the circumstances and made a good-faith effort to pay his debts. There are clear indications that his financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b), 20(c), and 20(d) are applicable. AG ¶ 20(a) is not completely applicable because Applicant is still in the process of paying his debts.

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 the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence, the factors that led to his financial problems, and his credible testimony that he will address all his financial issues. I am convinced he will continue to pay his delinquent debts.

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.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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge