



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



In the matter of:)	
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Applicant for Security Clearance)	ISCR Case No. 14-00332

Appearances

For Government: P. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

09/09/2014

Decision

LYNCH, Noreen, A., Administrative Judge:

On April 17, 2014, 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 July 23, 2014. A notice of hearing was issued on August 8, 2013, scheduling the hearing for August 14, 2012. The case was postponed for good cause. An amended notice of hearing was issued on August 12, 2014, scheduling the hearing for August 28, 2014. Government Exhibits (GX) 1-6 were admitted into evidence without objection. Applicant testified, and he submitted Applicant Exhibits (AX) A-M, which were admitted into the record without objection. I kept the record open for Applicant to submit additional documents. He timely provided an exhibit, which was marked as AX N, and admitted into the record

without objection. The transcript (Tr.) was received on September 8, 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 the SOR allegations ¶¶1. a-1.y with explanations for several debts that were paid. He denied overall security concerns under Guideline F (Financial Considerations).

Applicant is a 35-year-old software engineer for a defense contractor who graduated from high school in 1997. He attended college, but he has not yet obtained his undergraduate degree. Applicant is married and has two children. Applicant has been with his employer since July 2012. (GX 1) However, he has worked in the information technology (IT) field for about 15 years. (Tr. 25) Applicant has held a security clearance since 2007. (GX 1).

The SOR alleges indebtedness for 21 delinquent debts including a judgment, medical accounts, a federal tax lien, collection accounts, and charged-off accounts for a total of approximately \$20,000. The SOR also alleges failure to file income tax returns for the state and federal government for tax years 2011 and 2012.

Applicant disclosed his multiple financial issues on his latest security clearance application. He noted that his spouse's vehicle had been repossessed, and that he was delinquent on some credit card debt and medical bills. He attempted to work with creditors and collection agencies, but he had difficulty sorting out which debts were valid.

Applicant's explanation for his accumulated debts is not monitoring the household money. He also did not keep track of his bills and how they were paid. Applicant believes that due to his long work hours and commute, he left the responsibility for the financial matters to his wife. Applicant and his wife shared a joint bank account and he believed that the money was used to pay bills and expenses. He later learned that the money was spent in a frivolous manner on clothing, jewelry, and other unnecessary expenses. (Tr. 32)

In addition, Applicant's wife inherited a large sum of money before she and Applicant were married. The house was purchased in 2004 with some of that money. The mortgage loan was an adjustable rate mortgage. However, his wife only earned \$30,000. When the mortgage increased by almost \$2,000 a month, it was not possible to make the payments. Applicant explained the house was too expensive to maintain. He helped with the mortgage payments, but they could not maintain the payments. His wife attempted a short sale, which did not materialize. In 2008, the house went to foreclosure. Applicant's wife paid \$200,000 to the bank, but her income was garnished. The issue is now resolved, but the garnishment of her income reduced the total family income by about \$15,000 a year. (Tr. 40)

Applicant has a child from a previous relationship. He attempted to gain custody of his child several times, the latest a few years ago. As a result of a contentious battle, it cost him about \$30,000 in legal fees and other court costs. Applicant pays child support in the amount of \$700 a month, which comes directly from his paycheck. He has never missed a payment. He has no arrears. (Tr. 46) Applicant also pays a portion of his child's school fees.

The combination of the loss of his wife's income, the legal fees for the child custody battle, and his wife's excessive spending and not paying the household bills, created the financial crisis that Applicant now faces.

After learning about the mismanagement of household fund, and the ensuing delinquent debts, Applicant opened a separate bank account to be used for household expenses. His wife does not have access to this account.

Applicant consulted an attorney who advised him to file Chapter 13 bankruptcy. (AX A-D). He saved sufficient money to pay the attorney and file for the bankruptcy. In June 2014, he and his wife took the required credit counseling course. (AX E) All of the debts alleged in the SOR are included in the bankruptcy. (Tr. 29) He follows a budget. He wants to pay his debts through the bankruptcy plan. He submitted proof that he made his first payment of \$756. (AX N)

Regarding the unfiled taxes, Applicant had not submitted his federal income tax return for 2011. (AX G) Applicant's document reflects that he filed the form in May 2014. With respect to the unfiled state income tax return for 2011 and 2012, Applicant submitted documentation that they has been filed. (AX H) Applicant's wife told him she went to a tax consultant and took care of the tax filings. He was credible in his testimony that he believed the returns had been filed. (Tr. 59)

Applicant incurred a debt to the IRS in the amount of \$4,840. In 2010, Applicant was late with his federal income tax. (GX 2) He learned that the filing had not occurred, when the IRS garnished his paycheck. He submitted a Release of Levy (Form 668-D) dated May 6, 2014. (AX F) The debt is paid.

Applicant's annual income is approximately \$140,000. He is current on all his expenses. He is up-to-date with his filing of tax returns. (AX I-L) His wife works in sales and her income varies. At the hearing, Applicant explained that he is now in charge of all his family's personal finances.

Applicant presented four letters of recommendation, including one from his direct manager, project manager, colleague, and personal friend. Each attested to Applicant's honesty, character, and value as a team member in his work. Applicant was candid about his financial difficulties with his employer and despite the issues, his employer sees no reason to not continue Applicant's security clearance. Applicant follows procedures and properly safeguards classified information. He acts in the best interests of the government. (AX M) Applicant has learned from his mistakes. His performance at work has not been affected.

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. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

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." ⁴ "The clearly consistent standard indicates that security clearance

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ 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 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;

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

(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 admitted that he acquired delinquent debt in the amount of \$20,000. He filed a Chapter 13 bankruptcy petition in August 2014. His admissions and his credit report confirm his debts. Applicant did not timely file certain state and federal tax returns. Consequently, the evidence is sufficient to raise disqualifying conditions in §§ 19(a), 19(c) and 19(g)

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 financial difficulties occurred as the result of his wife's mishandling of the household finances. She had purchased a house before they were married that she could not afford. This impacted Applicant's finances when they married. That issue is fully resolved, but the household income was reduced. Applicant incurred legal fees due to a contentious custody battle. His legal fees were about \$30,000. He pays child support in the amount of \$700 a month. He has no arrears. Applicant's belief that his wife was paying all necessary bills was mistaken. He had no idea that she was spending money on extravagances and not paying the household expenses. She also told him that she had filed the income tax returns, but she had not. When Applicant learned about the issues, he took immediate action. He separated the checking accounts. He is handling the financial matters. He wanted to pay his creditors, and after legal advice, he filed for Chapter 13 bankruptcy. He has made his first payment. He received the required financial counseling. He has resolved the tax issues. He has no other debts. AG ¶¶ 20(a) through (d) 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 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. 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 35 years old. He is married and has two children. He has held a security clearance since 2007 without incident. He has worked in the defense contracting field for about 15 years. He has excellent references. He is diligent in his child support obligation.

Applicant did not relinquish responsibility for the delinquent debt, but he was credible that his wife handled the financial household matters and that he believed all was in order. She did not use the household money to pay the bills. She spent money on extravagances. When Applicant learned of the situation, he took action. He has

