



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



In the matter of:)
)
) ISCR Case No. 14-00499
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

07/24/2014

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On February 25, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on March 28, 2014, and requested a hearing. The case was assigned to me on May 5, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 13, 2014, setting the hearing for June 4, 2014. The Government offered exhibits (GE) 1 through 4, all of which were admitted into evidence, except for GE 3. Applicant objected to all the Government exhibits. I

overruled the objections to GE 1, 2, and 4, but sustained the objection to GE 3. Applicant testified and offered exhibits (AE) A through Z. AE H was the same document as GE 3. Upon questioning, Applicant withdrew AE H and it was not considered by me). The remaining exhibits were admitted into evidence without objection. Although the record was not held open, Applicant submitted two exhibits after the record closed, which were marked as AE AA and AB. Department Counsel posed no objection, so those exhibits were also admitted. DOHA received the hearing transcript (Tr.) on June 12, 2014.

Findings of Fact

Applicant is 56 years old and was the CEO of a defense contractor since March 2013, but was relieved of his duties pending resolution of his security clearance issue. He has a bachelor's degree and is a CPA. He is married for the third time and has a child from his second marriage and a stepchild from his third. He does not currently hold a security clearance.¹

The SOR alleges Applicant was indebted on four accounts. The debts were listed on credit reports obtained in August 2013 and February 2014. Applicant denied the first three debts, indicating that he had settled the credit card debts (SOR ¶¶ 1.a – 1.b) and re-financed his home mortgage (SOR ¶ 1.c). He admitted the final debt, but indicated he was working on a settlement with the creditor (SOR ¶ 1.d).²

Applicant was a highly successful business executive in the private sector for many years. His tax records show that from 2005 to 2009 his average income was about \$950,000, with his high income being about \$1.4 million. During this time, he was the chief financial officer (CFO), chief operating officer (COO), and senior vice president of Company X. Through his efforts as CFO and COO, the company's earnings grew to approximately \$200 million in 2008. He would receive an end-of-the-year bonus (.015 percent of pretax earnings) and for, 2008, it was projected to be about \$1.5 million. In the past, he used this bonus money to pay the credit card bills he accumulated during the year. Also in 2008, Company X grew to such an extent that company executives entertained offers to sell the business for \$1 billion. If the sale went through, Applicant would receive about \$12 million. The business market for Company X collapsed later in the year and all the sale offers were withdrawn, except for one low offer that was rejected. In February 2009, right before he was to receive his \$1.5 million bonus for 2008, he was terminated without warning or explanation. He did not have a written employment contract with Company X.³

¹ Tr. at 6-7, 15, 55-56; GE 1.

² GE 2, 4; Answer.

³ Tr. at 41-43; GE 1; AE J-N; Answer.

Applicant also went through a contentious divorce with his second wife, which settled in July 2008. The settlement required him to pay his ex-wife approximately \$329,000 at that time. He retained physical custody of their minor child.⁴

Applicant hired an attorney to pursue his options against Company X because of his termination. They reached a settlement where Applicant received about \$625,000 in a severance package, but which also required him to sign a non-compete agreement extending two years (from February 2009 to April 2011). Applicant explained that the non-compete agreement restricted him from working as a business executive for any other company. He was not restricted from starting his own business, which is what he did. He opened a restaurant, which was successful, but it did not produce a profit for him to take out of the business. In 2011, when the non-compete provision expired, he started his own management consulting firm, which he owned from 2011 to 2013, until he became the CEO of the defense contractor sponsoring his security clearance. Before he was let go from his current position, his annual salary was approximately \$360,000.⁵

Applicant presented documentation showing the debts listed in SOR ¶¶ 1.a and 1.b were settled in March 2014. He presented documentation showing that he successfully negotiated a mortgage modification and proof that he is current on that mortgage. His post-hearing evidence showed that he negotiated a settlement with the creditor of SOR ¶ 1.d and, although not yet executed, provided the terms of the settlement.⁶

Applicant presented 16 letters of recommendation from colleagues, co-workers, business associates, and friends. All held the highest regard for the Applicant in the areas of integrity, trustworthiness, and professional ethics.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 that 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

⁴ Tr. at 41, 58; AE O.

⁵ Tr. at 44-47, 50.

⁶ Tr. at 51-52; AE E, T-X, Z, AA; Answer.

⁷ AE Y.

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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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 about 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* Executive Order 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 as follows:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns

about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁸

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 had multiple delinquent debts. The evidence is sufficient to raise the disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

Several financial considerations mitigating conditions under AG ¶ 20 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.

The delinquent debts attributed to Applicant were recent. He has settled two credit card debts, worked to modify his mortgage, which is now in good standing, and negotiated an expected settlement for the final debt. These efforts to repair his financial position make it reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant became indebted when he was suddenly terminated from a position where he was earning about \$1 million per year. He reached a financial settlement in that matter, but was required to give up pursuing his profession for two years. He also

⁸ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

went through a contentious divorce during the same time frame and paid his ex-wife in excess of \$300,000. Once he obtained full-time employment in his career field in 2013, he began resolving his delinquent debt. His termination and divorce were conditions beyond his control and once he was able to do so, he acted responsibly by settling his credit card debts, successfully seeking a mortgage modification, and establishing a settlement plan for the remaining debt. AG ¶ 20(b) applies.

There are clear indications that all the debts have been resolved through payment or are being resolved through a settlement plan. He made good-faith efforts to resolve all the debts listed on the SOR. He supplied documentary evidence showing the payments made and the settlement plan established. AG ¶ 20(c) and ¶ 20(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 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 relevant 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 found Applicant to be honest and candid about the circumstances that led to his debts. He has an outstanding business reputation. His character references described him as a man of integrity and high professional ethics. He has settled his debts, negotiated a mortgage modification that has him in good standing, and worked out a settlement plan for the final debt. I found nothing to indicate a likelihood that similar circumstances would recur.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, 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.d: 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.

Robert E. Coacher
Administrative Judge