



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



In the matter of:)
)
) ISCR Case No. 14-00592
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

11/03/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On April 12, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on May 13, 2014. The Government requested a hearing before an administrative judge. The case was assigned to me on August 18, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 26, 2014. I convened the hearing as scheduled on October 16, 2014.

The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibit (AE) A through F, which were admitted into evidence without objection. The record was held open until October 27, 2014, to allow Applicant time to submit additional documents. He submitted AE G and H, which were admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on October 27, 2014.

Findings of Fact

Applicant admitted all the allegations in the SOR. I have incorporated the admissions into my findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 55 years old. He served in the Navy from 1977 to 1981 and was honorably discharged. He was a career law enforcement officer and retired after 24 years of service. He was married from 1981 to 1983, and from 2006 to 2010. Both marriages ended in divorce. He does not have any children.²

During Applicant's second marriage he accumulated debts. When he retired from his law enforcement job in 2010 he took a lump-sum pension so he could pay his debts. He used the bulk of his pension to pay his debts. He was going through a divorce around the same time, and gave his wife \$15,000 to help her pay two credit cards and so she could rent a place to live. He does not have any financial obligations to his ex-wife. He attributed the remaining three delinquent debts, listed in the SOR, to financial difficulty when he was going through his divorce.³

Applicant moved in January 2011 to another state. He lived with a friend. He obtained a job, but the pay was minimal. In March 2011 he got another job that he held until May 2014, when he left for a better-paying job. After moving he needed time to build up his finances and save money in an emergency account.⁴

The debt in SOR ¶ 1.a (\$1,227) was settled and paid in October 2014. The debt in SOR ¶ 1.c (\$9,701) is for past-due mortgage payments. Applicant got behind in payments and made a payment of \$5,942 from his pension to the mortgagor in June 2010. He attempted to short sell the property, but was unsuccessful. The house was eventually foreclosed and sold. There is no deficiency and the account shows a zero balance.⁵

¹ Hearing Exhibit I is Department Counsel's Memorandum.

² Tr. 46.

³ Tr. 21-25, 47-58.

⁴ Tr. 25-31.

⁵ Tr. 31-35, 39-40, 58-63; AE B, C; Answer to SOR.

Applicant negotiated a payment plan for the debt in SOR ¶ 1.b (\$6,432). He made an initial \$400 good-faith payment and paid the first monthly payment of \$80. He intends to continue making the \$80 monthly payments until the debt is satisfied.⁶

Applicant has no new delinquent debts. He cared for his mother after his father died in 1996. His helped her with medical bills that were not covered by Medicare. He estimated he spent about \$30,000 for her care over the years. He helped his father, who suffered with Alzheimer's disease before he died. When his mother died in 2009, he paid approximately \$5,000 to \$6,000 of her bills.⁷

Applicant provided a voluminous amount of character evidence that included educational achievements, citations, certificates of completion and training, certificates of appreciation, and service awards and commendations. He also provided proof of various licenses he holds.⁸

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 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, these guidelines are applied 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." 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 not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is

⁶ Tr. 36-37, 40-45; AE D, G, H.

⁷ Tr. 68-75.

⁸ Tr. 38; AE E and F.

responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 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.” 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant had three delinquent debts that he was unable to pay for a period. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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.

Applicant was retiring during the time he was going through a divorce. He accumulated numerous debts during his second marriage. He chose to have his pension paid in a lump sum so he could pay the majority of his debts. The remaining debts are those alleged in the SOR. His house was foreclosed and there is a zero balance on the debt. He settled and paid one debt, and has a payment plan on the other. The circumstances that caused Applicant's financial difficulties are unlikely to recur and do not cast doubt on his current reliability, trustworthiness or good judgment. His divorce was beyond his control. By taking a lump-sum pension he acted responsibly to pay his debts and help his wife start a new life. He made a good-faith effort to repay creditors and resolve debts. He has no other delinquent debts. There are clear indications his financial problems are behind him and under control. AG ¶¶ 20(a), 20(b), 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 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.

Applicant is 55 years old. He served honorably in the Navy and then he was a career law enforcement officer. He made a decision to receive his pension in a lump sum so he could pay his debts. His home was foreclosed, but there is a zero balance owed. One of the SOR debts is paid and the other he is paying through a payment plan. Applicant provided a great deal of character evidence that reflects an honest and trustworthy person with a long history of exercising good judgment. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

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

Carol G. Ricciardello
Administrative Judge