



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



In the matter of:)
)
) ISCR Case No. 14-01389
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: Kathleen T. Milam, Esq.
G. Bartley Loftin, III, Esq.

11/12/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On June 3, 2014, 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 responded to the SOR on June 27, 2014, and July 17, 2014, and elected to have the case decided on the written record in lieu of a hearing. On August 4, 2014, Department Counsel requested a hearing before an administrative judge. The case was assigned to me on September 23, 2014. The Defense Office of Hearings and

Appeals (DOHA) issued a notice of hearing on September 29, 2014, scheduling the hearing for October 22, 2014. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A through X, which were admitted without objection. Department Counsel sent an informational letter to Applicant on August 29, 2014. The letter is included in the record as Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on October 30, 2014.

Findings of Fact

Applicant is a 43-year-old employee of a defense contractor. He graduated from a military service academy in 1993. He served on active duty in the U.S. military until he was honorably discharged in 1999. He has a master's degree, and he is pursuing a doctorate degree. He has worked for defense contractors since his discharge from the military in 1999. He started his current employment in April 2014. He seeks to retain his security clearance, which he has held for more than 20 years. He is married with two minor children and an adult stepchild.¹

The SOR alleges a mortgage loan that was \$4,013 past due, with a balance of \$176,027 (SOR ¶ 1.a), two credit card debts in collection (SOR ¶ 1.c - \$5,430; SOR ¶ 1.d - \$3,627), three delinquent medical debts totaling \$247 (SOR ¶¶ 1.e-1.g), a \$16,153 foreclosed timeshare (SOR ¶ 1.h), and \$52,905 in deferred student loans (SOR ¶ 1.i).² The allegations were established through credit reports and Applicant's admissions. The debts are addressed in the table below.

SOR	AMOUNT	STATUS	EVIDENCE
1.a Mortgage loan	\$4,103 past due; \$176,027 balance	Current.	Tr. at 34, 62-63; Response to SOR; AE G-J.
1.c Credit card	\$5,430	Settled for \$1,901 and paid in June 2014.	Tr. at 35-36, 64-65; Response to SOR; AE K, L, W.
1.d Credit card	\$3,627	Settled for \$1,270 and paid in June 2014.	Tr. at 35-36, 64-65; Response to SOR; AE M, N, X.
1.e Medical debt	\$200	Paid in June 2014.	Tr. at 36-37; Response to SOR; AE O, P.

¹ Tr. at 23, 28-30, 42, 49, 56, 68; GE 1, 2.

² There is no SOR ¶ 1.b allegation. I did not renumber the allegations.

1.f. Medical debt	\$95	Paid in June 2014.	Tr. at 36-37; Response to SOR; AE Q.
1.g. Medical debt	\$52	Paid in June 2014.	Tr. at 36-37; Response to SOR; AE R.
1.h. Vacation timeshare	\$16,153	Foreclosed and sold. No deficiency balance.	Tr. at 37-40, 63-64; Response to SOR; AE S-U.
1.i. Student loans	\$52,905	Deferred until December 2014. \$78,980 balance.	Tr. at 40-42, 65-67; Response to SOR; AE V.

In summary, Applicant brought his mortgage loan current; he paid or settled the five delinquent debts; the timeshare was sold after foreclosure without a deficiency balance due; and the student loans are in deferred status. Applicant will start paying the student loans in December 2014.

Applicant was not as diligent about his finances as he should have been. His wife was a stay-at-home mother. His stepchild incurred legal and other expenses that were paid by Applicant and his wife.³

Applicant received a substantial pay increase when he started work for his current employer. The company advanced him \$20,000 against his salary, which he used to settle and pay debts. His wife returned to the workforce in 2012, and she also earns a good salary. His stepchild is now employed. Applicant understands the importance of fiscal responsibility to his security clearance and his job. He is committed to maintaining his finances in proper order.⁴

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

³ Tr. at 25-33, 37-38, 44-49, 56-68; Applicant's response to SOR; GE 2.

⁴ Tr. at 34-35, 48-52, 68-69; Applicant's response to SOR.

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, 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. The following are potentially applicable:

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

Applicant accumulated delinquent debts and was unable or unwilling to pay his financial obligations. The above disqualifying conditions are applicable.

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 incurred unexpected expenses, but he was not diligent about managing his finances. In July 2014, he switched jobs at a substantial increase in salary. He used his \$20,000 salary advance to bring his finances in order. His wife returned to the workforce at a good salary. Applicant is aware of the importance of keeping his finances in order.

I find that Applicant made a good-faith effort to pay his debts. His financial problems have been resolved. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are applicable. AG ¶ 20(b) is not applicable.

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 honorable military service and his stable work record. Applicant should have been more diligent about managing his finances, but they are now in order and should remain in that state.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.c-1.i:	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