



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



In the matter of:)
)
) ISCR Case No. 14-02101
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

03/13/2015

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 August 8, 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 August 26, 2014, and requested a hearing before an administrative judge. The case was assigned to me on January 8, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 14, 2015, scheduling the hearing for February 10, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through K, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that were marked AE L through O and admitted without objection. DOHA received the hearing transcript (Tr.) on February 19, 2015.

Findings of Fact

Applicant is a 57-year-old employee of a defense contractor. He has worked for his current employer since 1987. He served in the U.S. military from 1975 until he was honorably discharged in 1980. He seeks to retain his security clearance, which he has held since 1987. He has a master's degree. He is married for the second time with two adult children and an adult stepchild.¹

Applicant overextended himself financially. He had a rental property, and the tenant did not pay rent for six to eight months. The tenant finally moved out leaving extensive damage to the property. Applicant also had to make repairs to the family home, and his children were in college. He had large balances on four credit card accounts. Applicant contracted with a law firm in June 2012 and enrolled the four debts (SOR ¶¶ 1.a-1.d), totaling about \$104,400, in the firm's debt-resolution program. He continued to pay his other debts. Applicant established that the four SOR debts were settled or otherwise resolved.²

In September 2013, Applicant settled the \$11,619 debt alleged in SOR ¶ 1.c for \$6,971. He paid the settlement amount through 12 monthly payments of \$580.³

In March 2014, Applicant and the bank holding the \$20,443 debt alleged in SOR ¶ 1.a agreed to settle the debt for \$11,700. Applicant made monthly payments toward the settlement until he made the final \$4,875 payment in October 2014.⁴

Applicant settled the \$24,836 debt alleged in SOR ¶ 1.d for a lump-sum payment of \$12,418. He paid the full \$12,418 in September 2014.⁵

The bank holding the debt alleged in SOR ¶ 1.b issued an Internal Revenue Service (IRS) Form 1099-C (Cancellation of Debt) in May 2013, which cancelled Applicant's \$42,441 debt. This created tax consequences, which Applicant reported in his 2013 income tax return. The 1099-C generated an additional tax bill of about \$18,000. He paid \$5,000 to the IRS with his income tax return, and he has been paying

¹ Tr. at 22, 33, 36-37; GE 1; AE I.

² Tr. at 19-22, 34; GE 1-4; AE A.

³ Tr. at 21, 28-31; Applicant's response to SOR; GE 1-4; AE A,-C, L, M.

⁴ Tr. at 21, 23-26; Applicant's response to SOR; GE 1-4; AE A, D-F, N, O.

⁵ Tr. at 21, 31-33; Applicant's response to SOR; GE 1-4; AE A, G.

\$200 per month. Applicant anticipates receiving a bonus from his employer, which he will use to pay his remaining tax liability.⁶

Applicant has not received formal financial counseling, but his finances have greatly improved. He has not taken out new credit cards, and he adheres to a monthly budget. He credibly testified that he will pay his tax debt.⁷

Applicant submitted numerous documents attesting to his excellent job performance, ethics, and judgment. He has received multiple awards from his company.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 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, 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

⁶ Tr. at 21-22, 26-28; Applicant's response to SOR; GE 1-4; AE A, H.

⁷ Tr. at 31-37; Applicant's response to SOR; GE 1-4.

⁸ AE J, K.

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 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's finances suffered because of problems with his rental property, home repairs, and the expenses associated with children in college. He decided his best recourse was to engage the services of a law firm to assist him in addressing four large credit card accounts while he continued to pay his other debts. Since then, he settled three debts, and the bank cancelled the fourth. He credibly testified that he will continue with the payments to address the tax consequences of the cancelled debt.

I find that Applicant acted responsibly and made a good-faith effort to pay his debts. 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(c) and 20(d) are applicable. AG ¶ 20(b) has minimal applicability because problems with tenants are always possible with an investment property. AG ¶ 20(a) is not yet completely applicable because Applicant is still in the process of paying his tax debt.

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, his favorable character evidence, and his long and stable work history. I also considered the steps Applicant has taken to resolve his financial problems.

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
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Subparagraphs 1.a-1.d:	For Applicant
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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