



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



In the matter of:)
)
) ISCR Case No. 14-02345
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

12/12/2014

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 July 30, 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 August 25, 2014, and requested a hearing before an administrative judge. The case was assigned to me on October 30, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 31, 2014. I convened the hearing as scheduled on November 20, 2014. The

Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibit (AE) A through C, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 3, 2014.

Findings of Fact

Applicant admitted both SOR allegations with explanations. His admissions were incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 40 years old. He served in the military from 1994 to 2010 and was honorably discharged in the paygrade E-6. While serving on active duty he was awarded four Navy-Marine Corps Achievement Medals and five Good Conduct Medals. He anticipates completing his bachelor's degree in 2015. He married in 1999 and divorced in November 2012. He has two children, ages 14 and 9. He has held a security clearance since 1994. He has worked for a federal contractor since 2010.¹

In 2008, Applicant accepted a \$22,000 incentive bonus from the military to complete 20 years of service. He was having personal problems and was no longer content serving on active duty so he left the military. He understood he was required to repay the bonus he had received at \$1,000 a month. He could not afford the payment. He applied his 2011 tax refund of \$11,000 toward the debt (SOR ¶ 1.a), and started making small payments toward the balance.²

Applicant and his wife decided to divorce and his finances became strained. He was working overseas and sending money to his wife to support his children. Based on his overseas salary the child support amount was increased to \$2,000 a month. This occurred two months before Applicant returned to the United States. When he returned he was still required to pay the increased amount, even though he was no longer earning the higher salary. It took approximately six to seven months to get the child support payments reduced to \$1,600 a month. Applicant and his wife had a long protracted divorce. Applicant's wife and children were living in another state. He explained that the expenses for lawyer's fees, court fees, and the travel associated with visiting his children, hearings, and meetings associated with the divorce affected his financial stability. He estimated his initial lawyer's fee was \$9,000 and after his wife moved he had to pay another \$6,000 to \$7,000 for a lawyer in the new state, along with other expenses. He was unable to repay the military bonus during this time. He stated he was not being irresponsible, but rather had to prioritize his expenses. It was important to him to resolve his custody issues first, which was costly. After the divorce was finalized, Applicant paid all marital debts and slowly started paying his other bills.³

¹ Tr. 18-21, 48-53.

² Tr. 21-25.

³ Tr. 21-30, 67-68.

In August 2014, Applicant contacted the government creditor for the debt in SOR ¶ 1.a (current balance \$9,557) to arrange a payment plan. He agreed to make monthly payments of \$220. He stated he made payments in October and November 2014 and intended to make consistent monthly payments. He provided a document showing the balance owed and his monthly payment. His 2012 and 2013 tax refunds were applied to the debt. He understands he owes the balance and will repay it through the monthly payment plan and with his tax refunds.⁴

The debt in SOR ¶ 1.b (\$5,010) is a car loan for a repossessed vehicle. According to Applicant's divorce decree his wife retained possession of the vehicle and was required to make the monthly payments. She was unable to make the payments and returned the vehicle to the creditor. Applicant was unaware she had the vehicle voluntarily repossessed. Because the vehicle loan was in both of their names, he is still responsible for the debt. When Applicant learned of the debt, he contacted the creditor and arranged a payment plan to settle the debt for \$1,800 with monthly payments of \$200 until it was satisfied. Applicant made monthly payments in March, April, and May of 2014. His ex-wife has not contributed to the monthly payments and refuses to help with the payments. Applicant intends to continue monthly payments in January 2015. It is unclear whether the settlement amount is still valid. He understands the importance of paying this loan because of its impact on his credit, even though the divorce order assigned this obligation to his ex-wife.⁵

Applicant credibly testified that prior to his divorce he did not have financial problems. The divorce and custody dispute had a serious financial effect on him. He has paid all other debts and the two on the SOR are the only two remaining. His child support payments are now approximately \$1,060 a month and are current. He participated in financial counseling offered by his employer. He maintains a written budget. He understands his financial obligations and intends to resolve these two remaining debts. He lives within his means.⁶

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

⁴ Tr. 30-35, 64-66; Answer to SOR; AE A.

⁵ Tr. 35-46, 66; Answer to SOR; AE B, C.

⁶ Tr. 47, 53-54, 63-64.

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 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 has two delinquent debts that he was unable to pay until recently. 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 is still resolving both of the delinquent debts alleged in the SOR. Therefore, the debts are recent, ongoing, and AG ¶ 20(a) cannot apply. Applicant's financial problems are attributed to his divorce. He was unable to meet his financial obligations when he returned from overseas, in particular his child support payments, which had been based on his higher salary. The costs associated with his divorce and travel also affected his finances. These conditions were beyond Applicant's control. In order to fully apply AG ¶ 20(b), Applicant must demonstrate that he acted responsibly under the circumstances. Applicant has not ignored his debts, but for a period of time he was unable to pay them. He has paid all of his other debts, and the SOR debts are the only two that remain. His ex-wife was required to pay the vehicle loan, but refuses to pay it. Applicant contacted the creditor and made some payments toward this debt and

intends to continue resolving it in 2015. Applicant has a monthly payment plan to resolve the debt in SOR ¶1.a. AG ¶ 20(b) applies.

Applicant made some payments toward the resolution of the two remaining debts. He contacted both creditors and has a monthly plan to resolve the remaining balances. He has made a good-faith effort to resolve his debts, and has shown that there are clear indications his financial problems are being resolved. 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 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 40 years old and honorably served in the military for 16 years. He understands the importance of repaying two delinquent debts and has made payments toward their resolution. He is paying what he is financially able to do at this time. He does not have other outstanding debts. These debts were not incurred because he was living beyond his means, but rather as a consequence of expenses associated with a divorce, and his ex-wife's refusal to pay a vehicle loan that was assigned to her in the divorce order. I found Applicant's testimony credible. Although all these debts are not completely resolved, I do not believe they rise to the level of a security concern. 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.b:	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