



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



In the matter of:)	
)	
)	ISCR Case No. 14-02383
)	
Applicant for Security Clearance)	

Appearances

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

04/28/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 16, 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 October 15, 2014, and requested a hearing before an administrative judge. The case was assigned to me on February 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 4, 2015, scheduling the hearing for March 30, 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 and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 7, 2015.

Findings of Fact

Applicant is a 48-year-old employee of a defense contractor. He has worked for his current employer since 2008. He served in the U.S. military from 1991 until he was honorably retired with a disability in 2007. He attended college for a period, but he did not earn a degree. He has been married for more than 20 years. He has a seven-year-old child.¹

The SOR alleges five delinquent debts, with balances totaling \$105,114, and that Applicant lost his home to foreclosure. The debts include a charged-off home equity line of credit (\$85,427),² deficiencies owed on auto loans after the vehicles were repossessed (\$13,122 and \$3,894), and credit card debt (\$1,691 and \$980). Applicant admits that he lost his home to foreclosure and that he owes all the debts, but he stated that the debts will be addressed in a Chapter 13 bankruptcy case.

Applicant and his wife bought a house in 1998 for about \$123,000. It was financed through a \$124,635 mortgage loan. He refinanced the mortgage loan in 2004. The March 2013 credit report indicates the high credit on the loan was \$170,000. In 2005, he opened a home equity line of credit that was secured by the home. The credit limit was \$87,000. Applicant stated that he spent over \$40,000 in improvements to the home. The March 2013 credit report shows \$85,427 as the reported amount for the high credit, the past-due amount, and the balance.³

In 2005, Applicant bought a used 2003 luxury sport utility vehicle (SUV), which he described as his "dream car." The March 2013 credit report indicates the high credit on the auto loan was \$36,180.⁴

Applicant used some of the proceeds from the home equity line of credit to pay for fertility treatments for his wife. She had to stop working during her high-risk pregnancy. She did not return to work until January 2008.⁵

Applicant's medical problems necessitated his discharge from the military in 2007. He is no longer physically capable of working with the sought-after skills he

¹ Tr. at 16-19, 66-67; Applicant's response to SOR; GE 1, 2.

² It is not completely clear whether this debt is a straight second mortgage loan or a home equity line of credit that was secured by the home. It appears to be the latter and will be referred to by that term. The distinction would have no effect on this decision.

³ Tr. at 20-23; Applicant's response to SOR; GE 2-4.

⁴ Tr. at 45; Applicant's response to SOR; GE 3.

⁵ Tr. at 55-56; Applicant's response to SOR.

learned in the military, which would have enabled him to earn a higher income. He receives 90% disability pay from the Department of Veterans Affairs (VA), which is currently \$2,100 per month. He does not receive separate retirement pay from the military.⁶

Applicant was unable to find suitable employment after his discharge. He had periods of unemployment and underemployment until he was hired by his current employer in 2008. Even with his VA disability pay, he is earning less than when he was in the military.⁷

Applicant had a long commute for work, and gas prices were high. In 2008, he traded the SUV in for a more fuel-efficient used 2006 luxury car. The March 2013 credit report indicates the high credit on the auto loan was \$30,411.⁸

In February 2011, Applicant sold two older-model vehicles and bought a used 2005 luxury SUV, financed through an auto loan. The March 2013 credit report indicates the high credit on the auto loan was \$13,138. The terms were reported as \$401 per month for 60 months.⁹

Applicant's wife stopped working in mid-2012. She had medical issues, and commuting costs and child care expenses were high. Applicant could not afford to pay all his bills and his mortgage loan on his income alone. He unsuccessfully attempted to refinance, modify the mortgage loan, utilize other government-sponsored mortgage-relief programs, or conduct a short sale of his home. The neighborhood had deteriorated, making it unsafe for his wife and child. He discussed his options with an attorney, who advised him to stop paying his bills and file bankruptcy. Applicant stopped paying his bills and started saving for the \$1,500 retainer fee for his bankruptcy attorney. He moved out of the home in December 2012 in anticipation of, or pursuant to, foreclosure proceedings.¹⁰

Applicant decided to voluntarily return the 2005 SUV and the 2006 car, sell a classic car he owned, and buy another vehicle. The 2005 SUV was returned to the lienholder, but the lienholder of the 2006 car refused to accept it as a repossession. He told the lienholder that he was planning to file bankruptcy, and the lienholder told him that it could not accept the vehicle until he had a bankruptcy case file number. The March 2013 credit report listed the loan as charged off, with \$13,122 past due and a \$13,122 balance. The date of last action on the loan was June 2012. Applicant still has the car, but he has made no payments on the car loan in several years. Applicant's

⁶ Tr. at 16-18, 43, 52-55; Applicant's response to SOR.

⁷ Tr. at 17-24, 42, 55-56, 59; Applicant's response to SOR.

⁸ Tr. at 33-34, 45; Applicant's response to SOR; GE 2-4.

⁹ Tr. at 47; GE 3, 4.

¹⁰ Tr. at 20, 24-33, 37-38, 40-41, 50, 56-58, 61; Applicant's response to SOR; GE 1, 2; AE A.

parents-in-law bought a car in their name and gave it to Applicant and his wife, who agreed to make the loan payments on the car.¹¹

Applicant believes the foreclosed home sold for about \$150,000. He and his wife live in a property owned by his parents-in-law and pay them rent. Applicant's parents-in-law placed their home in Applicant's wife's name "in case something happened to them." That had implications on the bankruptcy. The property had to be deeded back to the parents-in-law, which delayed the filing of the bankruptcy.¹²

Applicant and his wife filed a Chapter 13 bankruptcy case in March 2015. Under Schedule D, Creditors Holding Secured Claims, the petition listed \$26,510 in claims for a \$497 homeowners association lien and two auto loans, including the charged-off loan on the 2006 car and the loan in the in-laws' names. There were no unsecured priority claims. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed debts totaling \$275,002. That amount included \$153,030 for the mortgage loan on Applicant's foreclosed home and \$85,427 for the home equity line of credit. Also included was \$3,894 for the deficiency owed on the loan for the voluntarily-returned 2005 SUV. The two credit card debts from the SOR were also listed in the petition.¹³

The proposed bankruptcy plan calls for 60 monthly payments of \$360, for a total amount of \$21,600. Estimated trustee's fees of \$2,160 and additional attorney's fees of \$4,474 will be paid through the plan. Applicant retained the 2006 car. The proposed plan calls for \$155 per month, for a total of \$9,351, to be paid to the lienholder of the 2006 car. The loan on the 2010 car in the in-laws' names is to be paid outside the bankruptcy.¹⁴

Applicant received financial counseling as a requirement of the bankruptcy. He stated that he will continue with an approved bankruptcy plan. He stated that his wife has a part-time job at their child's school, but it is sporadic. The bankruptcy petition did not list any income for his wife. His wife is looking for another job, and Applicant is looking for better job prospects. He is also contemplating returning to school and using his G.I. Bill benefits.¹⁵

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

¹¹ Tr. at 35-37, 44, 47, 59-61; Applicant's response to SOR; GE 1-4.

¹² Tr. at 38-41, 51-52, 62; Applicant's response to SOR; AE A, B.

¹³ Tr. at 45; AE B.

¹⁴ Tr. at 45, 49; AE B.

¹⁵ Tr. at 25, 63-64; Applicant's response to SOR; AE B.

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 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 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 medical problems necessitated an early retirement from the military. He had periods of unemployment and underemployment until he was hired by his current employer in 2008. Even with his VA disability pay, he is earning less than when he was in the military. His wife had a high-risk pregnancy and was out of work until January 2008. His wife stopped working in 2012, at least partially because of her medical condition. Those events were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant followed his attorney's advice and stopped paying his bills in 2012 in anticipation of his bankruptcy. The bankruptcy went unfiled for almost three years, yet Applicant still did not pay any of his debts. Meanwhile, he is driving a 2006 luxury car that he has not made a payment on since June 2012. The bankruptcy plan has not been approved, and Applicant has not made any payments to the plan. What is lacking is a

track record of consistent payments towards his debts or the bankruptcy. It is too soon to conclude that the plan will be approved, and Applicant will adhere to it.

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent. They continue to cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. The first part of AG ¶ 20(c) is applicable because Applicant received financial counseling as a requirement of his bankruptcy. The second part is not applicable. I find that financial concerns remain despite the presence of some mitigation.

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.

I also considered Applicant's honorable military service. However, Applicant has a history of financial problems. It is too soon to conclude that he will resolve those problems through his Chapter 13 bankruptcy case.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	Against Applicant
Subparagraphs 1.a-1.f:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge