



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



In the matter of:)	
)	
)	ISCR Case No. 14-02444
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

11/03/2014

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on January 14, 2014. The Department of Defense (DOD) Consolidated Adjudications Facility, Division A, (CAF) issued Applicant a Statement of Reasons (SOR) on July 11, 2014, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on July 17, 2014, and he answered it on July 29, 2014. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on August 29, 2014, and I received the case assignment on September 2, 2014. DOHA issued a Notice of Hearing on September 5, 2014, and I convened the hearing as scheduled on September 30, 2014. The Government offered five exhibits (GE) marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant and three witnesses testified. He submitted one exhibit (AE) marked as AE A, which was received and admitted into evidence without objection. I held the record open until October 14, 2014, for Applicant to submit additional matters. Applicant timely submitted AE B - AE E, which were received and admitted without objection. The record closed on October 14, 2014. DOHA received the hearing transcript (Tr.) on October 16, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 40 years old, works as an electronics technician for a DOD contractor. He began his current employment in January 2014. The facility security officer (FSO) for Applicant's employer testified. He trusts Applicant, whom he described as dependable, reliable, and forthright. Applicant discussed the issues in the SOR with him. The FSO spoke with Applicant's supervisors and coworkers, who advised that Applicant was an asset to the company and who supported his being granted a security clearance.¹

Applicant graduated from high school in 1993. He served on active duty in the United States Army from October 1993 until March 1997 and again from January 1999 until March 2003. He received an honorable discharge both times. At the time of his second discharge, the Department of Veterans Affairs (VA) reviewed his documentation and gave him a 50% disability rating.²

Applicant married his first wife in January 1996 and divorced her in April 2007. He has four children from this marriage. His two sons are ages 18 and 17. His two daughters are ages 16 and 13. Except for one son, his children live with their mother in State A. He pays child support for his children. He remarried in April 2014.³

¹Tr. 66-69.

²GE 1; Tr. 23-25, 29-31.

³GE 1; Tr. 22.

When he was not serving in the Army, Applicant lived in State A with his first wife, children, and mother-in-law. After his discharge from the Army in 2003, Applicant obtained low-paying and sporadic jobs in State A, making it difficult for him to support his family and necessitating a reliance on welfare. In 2004, he moved to State B, where his parents lived and obtained a full-time job with Company 1. He lived with his parents and paid \$700 to \$800 a month in child support to his wife, who refused to move to State B.⁴

Applicant worked for Company 1 in its plant from July 2004 until March 2007. He initially earned \$11.50 an hour. In 2007, he sustained a serious injury to his back, which was a second injury to his back. Applicant pulled his back, creating problems with rising up from a sitting or lying down position and with standing. He sought medical treatment. His physician advised him that he had four herniated discs and referred him for physical therapy. Applicant could not work for six months. The physical therapy helped improve his condition. However, his physician told him that if he returned to his construction job, he would likely injure himself more severely and recommended that he find other work. Applicant sought a second opinion from VA physicians, who also recommended that he not return to his construction job for the same reason. The VA increased his disability rating to 60% because of this injury. During this time, Applicant received long-term disability payments through Company 1.⁵ These payments lasted about two years.⁶

The VA recommended that Applicant return to school for additional training. The VA placed him in a Chapter 31, vocational rehabilitation program. He enrolled in a state university in the fall 2009. He completed the requirements of a laser optics program in December 2013, but the university closed the program before he could complete his bachelor's degree. Applicant has approximately 84 credits towards a bachelor's degree, but he does not have any definite plans to complete his degree at this time. Applicant received \$1,200 a month in income from the VA while he attended school.⁷

In 2005, while in the process of divorcing his first wife, Applicant contacted an attorney in State B about filing a Chapter 13 bankruptcy petition. Upon the recommendation of the attorney, Applicant filed a Chapter 7 bankruptcy petition, which resulted in the discharge of his debts in 2005. Except for the two debts listed in the SOR, Applicant has not incurred any additional unpaid debts since the completion of his bankruptcy case.⁸

⁴GE 1; Tr. 23, 25-27.

⁵Company 1 declined to place him on workers compensation. Tr. 34.

⁶Response to SOR; GE 1; GE 2; Tr. 28-35.

⁷Response to SOR; Tr. 31-33.

⁸GE 3 - GE 5; Tr. 37.

Under his divorce decree, Applicant pays \$750 a month in child support to his former wife. Between June 2006 and February 2008, he paid the required monthly amount of his child support with the income from his job or with his long-term disability income. When his long-term disability income ceased, he experienced difficulty meeting his monthly child support payments. He made smaller monthly payments and his income tax refunds were applied to reduce his arrearage. When he started college, he tried to negotiate a smaller monthly child support payment as his VA benefits did not provide him with sufficient income each month to pay his necessary living expenses and his child support. State A declined to work with him initially. State A demanded that he quit school and take a low-paying job to pay his child support payments. He declined. He did not work during the summers while attending school on the advice of the VA counselor because if he had worked, State A would have insisted that he continue work and abandon school. Applicant eventually negotiated a reduced monthly payment of \$200 with State A, and he obtained education loans to help pay his monthly expenses. His support payment history reflects that any tax refunds to which he was entitled were applied to his child support arrearage.⁹

The SOR identified two debts, both related to his child support arrearage. Applicant's 17-year-old son received Social Security disability payments. State A listed the child support arrearage for this child separately. When Applicant started his current job in February 2014, he contacted State A and made arrangements for his pay to be garnished for his monthly child support payments of \$750. He also agreed to pay \$50 a month towards his arrearage. Some problems arose initially with how his company paid the garnishment because the company averaged the total yearly payment over 26 pay periods, making it appear as if he failed to pay the full monthly amount. To correct the problem, he increased his payment by \$12.50 a month, which is also being applied to his arrearage. In addition, any future income tax refunds and the child support deductions from the two extra paychecks per year will be applied to his arrearage. Applicant has complied with this plan.¹⁰

Applicant earns \$4,155 in gross income from his job, and he receives a VA disability benefit of \$1,198 a month. His second wife earns approximately \$1,000 a month in income for a total household income of \$6,353. Their total monthly expenses are \$5,891 and include rent, food, taxes, insurance, phones, gasoline, medical, and miscellaneous expenses. These expenses include \$812.50 for child support and arrearage payments and \$260 for his education loan, which is \$50 a month above the required payment. He also included savings of \$400 a month to buy a new car. His wife owns a 1996 car, and he does not have a car. After paying the household monthly expenses, his SOR debts, and his education loan, and saving for a car, he has a surplus of approximately \$300 for unexpected expenses.¹¹

⁹Response to SOR; Tr. 42-48.

¹⁰Response to SOR; Tr. 40-41, 48-49.

¹¹AE A - AE E; Tr. 60-63.

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.

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. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 relating to the guideline 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

After a financial fresh start afforded him by a bankruptcy discharge in 2005, Applicant fell behind in his child support payments after he injured his back and his long-term disability income ceased. The debts in SOR allegation 1.b and 1.c have not been fully resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

- (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.¹²

¹²The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must

Applicant's financial problems initially resulted from low income and unemployment when he worked in State A. After securing steady employment in 2004, Applicant sustained two injuries to his back. After his second injury, two physicians recommended that he not return to construction work. Unemployment and the injury to his back are factors beyond his control. In addition, he and his first wife divorced, causing increased financial pressures for Applicant. While on disability, Applicant paid his child support. At the recommendation of the VA, Applicant returned to school to improve his ability to obtain employment. As a student, his only income was his monthly VA benefit, which was insufficient to pay his living expenses and child support. He obtained school loans, part of which he used to pay his child support obligation. His actions were reasonable under the circumstances. After school ended and he obtained a full-time job, he immediately contacted State A and made arrangements to pay his full monthly child support payments and his arrearage through wage deduction. He continues to make these payments. This conduct reflects a good-faith effort to resolve his child support arrearage and to comply with his child support obligations. He pays his monthly bills and has sufficient income each month to pay his expenses and save for a car. His finances are under control. AG ¶¶ 20(b)-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 an 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.

present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good faith" mitigation condition].

(Internal citation and footnote omitted) ISCR Case No.02-30304 at 3 (App. Bd. Apr.20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. Applicant financial problems resulted from unemployment or underemployment. His divorce and subsequent serious back injury further compromised his financial problems. During his recuperation from his back injury, he continued to pay his full monthly child support payment. Upon the advice of the VA and with its assistance, Applicant started college in 2009 to acquire new skills and enhance his ability to find employment at a wage sufficient to support for his family. While he was in college, he could not pay his full monthly child support. After many conversations with State A officials, they agreed to a monthly payment of \$200 and the application of any future tax refunds to his child support obligation. As soon as he obtained gainful employment, Applicant contacted State A and made arrangements to resume his child support payments and start paying his arrearage. These payments are made directly from his pay checks.

A combination of circumstances created the financial situation in which Applicant found himself. He never ignored his obligation to support his children, he simply lacked sufficient income to pay. He resisted State A's pressure to abandon school and accept another low-paying job. He now earns a good salary, and he has taken control of his debts. He has sufficient income each month to pay his usual and customary expenses. Because he is paying his child support and arrearage, there is little likelihood that he can be pressured or coerced to release classified information to a foreign national. Applicant is a dependable and reliable individual who can be counted upon to act in the best interests of the United States.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances under Guideline F.

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

MARY E. HENRY
Administrative Judge