



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



In the matter of:)
)
) ISCR Case No. 14-02513
)
Applicant for Security Clearance)

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

05/22/2015

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 30, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on December 5, 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 Trustworthiness determination 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 December 9, 2014, and he answered it on December 16, 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 February 7, 2015, and I received the case assignment on February 23, 2015. DOHA issued a Notice of Hearing on March 9, 2015, and I convened the hearing as scheduled on March 26, 2015. The Government offered exhibits (GE) marked as GE 1 through GE 6, which were received and admitted into evidence without objection. Applicant and five witnesses testified. He submitted exhibits (AE) marked as AE A through AE F, which were received and admitted into evidence without objection. The record closed on March 26, 2015. DOHA received the hearing transcript (Tr.) on April 3, 2015.

Procedural Ruling

Notice

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. Applicant affirmatively waived this right under the Directive. (Tr. 12)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.b of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.c and 1.d of the SOR.¹ 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 44 years old, works as a technical writer for a DOD contractor. He began his current employment in January 2011. Prior to his current position, Applicant operated a small business with a friend from August 2009 until the end of December 2010. From March 2009 until August 2009, he was unemployed, having been laid off from his job as an integrated logistics support engineer in March 2009. Applicant worked as a federal contractor from 2004 until 2009.²

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²GE 1; AE A; Tr. 19.

At the age of 15, Applicant became an Eagle Scout in the Boy Scouts of America. He graduated from high school in 1989. He attended college from September 1989 until May 1993, when he graduated with a bachelor's degree. He again attended college from June 2010 until December 2011, but he has not earned a degree.³

After receiving his bachelor's degree, Applicant worked as a commissioned sales executive, selling advertising, from 1993 until 1998. During his first year of employment, he earned about \$24,000. In 1994, he earned approximately \$29,000. In 1995, his yearly income declined to \$19,600. In 1996, he earned \$16,300, and in 1997, he earned \$20,100. Applicant lived with his girlfriend part of this time, and he has a 22-year-old son from this relationship. His girlfriend earned approximately \$20,000. They ended their relationship. When she moved out, he lost her income. He also began paying child support.⁴ Due to all of these factors, Applicant could not pay his bills. He filed a Chapter 7 bankruptcy petition in May 1997, and the court discharged his debts in September 1997.⁵

In February 1998, Applicant enlisted in the Air Force. He served on active duty until May 2004, when he received an honorable discharge at the rank of staff sergeant. While in the Air Force, Applicant received a Good Conduct medal, the Air Force Achievement Medal, Air Force Outstanding Unit Award with three Oak Leaf clusters, and several ribbons. In June 2007, his commander recommended him for officer training school. His commander praised his professionalism, his performance, and his work skills.⁶

Applicant married his first wife in March 1997, and they divorced in April 2009. He and his first wife have a 17-year-old son and a 12-year-old daughter. He has a 22-year-old stepson from this marriage, and he has a 16-year-old son from another relationship. He pays child support for his three underage children. Applicant married his current wife in November 2013. He now has a 12-year-old stepson and a 10-year-old stepdaughter.⁷

After being laid off in 2009, Applicant unsuccessfully sought new employment. In August 2009, he and a long-time friend purchased a game and hobby business. They operated this business for about 16 months before it closed due to a loss of business. The business had been Applicant's only source of income. Applicant and his friend incurred many debts from the business. Because of these debts, Applicant filed a second Chapter 7 bankruptcy in May 2012 after taking the required credit counseling

³GE 1; AE A.

⁴Applicant paid the child support for his son until he reached age 18. GE 1.

⁵GE 2; AE D; Tr. 69-71.

⁶GE1; AE A; AE B; Tr. 19, 26.

⁷GE 1; AE C; Tr. 20-22, 74-75.

course. The majority of debts included in his bankruptcy related to the business. Applicant reaffirmed the mortgage on his home and his car payment. Except for a student loan and taxes owed, the court discharged Applicant's remaining debts on October 4, 2012. After ceasing their business operations, Applicant and his friend-partner owed the state approximately \$18,000 in sales taxes. Applicant's friend-partner, who managed the business finances, testified. All taxes owed to the state have been paid. His friend-partner worked with the state revenue department to resolve the taxes owed by the business. Applicant verified that he did not owe the state any taxes related to the business.⁸

Applicant timely files his federal and state income tax returns every year. During the tax year 2008, Applicant used savings to pay credit card debts. He incurred a large tax liability because he used taxable monies to resolve his debts. He initiated contact with the Internal Revenue Service (IRS) in November 2009 and made arrangements to pay his outstanding tax debt. His 2008 federal tax debt is resolved. He also incurred a \$3,000 tax debt with the state revenue department for the tax year 2008. He never received any information or notices from the state about this debt because the notices were received by his former wife who did not forward the information to him or otherwise tell him about the letters from the state. Eventually, the state revenue department garnished his wages to pay the debt, which is now resolved. There is no evidence the state filed a tax lien against the Applicant for his unpaid taxes.⁹

Applicant currently earns \$5,200 in monthly gross income, plus overtime. His two earnings statements of record reflect that during both pay periods, he worked 24 or 25 hours of overtime, which increased his net pay to \$4,265 for a month. Applicant provided a copy of his bank checking account, which indicates deposits from his pay between \$1,800 and \$2,100. The bank statements also reflect that Applicant properly manages his checking account. His wife has a significant savings account. Her earnings and income statement is not of record. Applicant has two mortgages because he rents the house he retained in bankruptcy, and he lives in another house with his new family. Applicant's total monthly expenses are unknown, but his bank accounts show that he has sufficient income each month to pay his living expenses and debts. The February 2015 credit report reflects that his debts have been resolved in bankruptcy or are currently paid. He does not have any outstanding, unpaid debts.¹⁰

Applicant's friend-partner and four witnesses testified on his behalf. All indicated knowledge of his financial issues and all indicated that they had never known him to make irresponsible financial decisions. They opined that they never observed him violating state laws, and one advised that Applicant never violated the provisions of the Uniform Code of Military Justice when in the military. They all considered Applicant honest, trustworthy, reliable, dependable, and a man of integrity. They have known him

⁸GE 1; GE 3-GE 5; AE F; Tr. 49-53, 78, 87-92.

⁹GE 1; AE E; Tr. 79-86.

¹⁰GE 6; AE C; Tr. 76-77.

at work and as friends outside of work. Applicant provided one written letter of recommendation. The author provides a similar evaluation of Applicant's character.¹¹

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.

¹¹AE A; Tr. 29-46.

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 sensitive [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.

Applicant’s financial problems initially started when he and his first wife separated and his employer laid him off. He and a friend purchased a business in August 2009, which failed by the end of 2010, creating further financial problems for Applicant. 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:

- (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 first bankruptcy occurred many years ago after the end of a relationship and the loss of income. When his first marriage ended and he lost his job in 2009, Applicant did not file bankruptcy; rather he continued to pay his bills to the best of his ability. When his business failed, he could not pay all the debt related to the business and his personal expenses. He filed for bankruptcy a second time, which reflects a pattern of using bankruptcy to resolve debts. Both bankruptcies resulted from lost income, but for different reasons. The loss of income from unemployment, divorce and cessation of the relationship was the result of circumstances beyond his control. In his second bankruptcy, he reaffirmed his mortgage debt and a car loan, which reflects acceptance of responsibility by him. There is little likelihood that Applicant will go into business again. His employment is stable as is his income. AG ¶¶ 20(a) and 20(b) apply in mitigation.

Bankruptcy always requires credit counseling, which he did. Applicant's current bills are paid and his income is sufficient to pay his ongoing living expenses and child support obligations. He resolved his state income tax debt through garnishment and his friend-partner worked to resolve the sales tax debt from their business. AG ¶ 20(c) applies. Applicant initiated a payment plan for his unpaid 2008 federal income taxes in 2009, reflecting a good faith effort to resolve this non-SOR debt. While he resolve this debt before the SOR was issued, it reflects his efforts to manage his debts even when his income was not fully stable. AG ¶ 20(d) is not raised.

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.

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. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems arose in 1997 when his earnings declined, his girlfriend moved, and he began child support payments. When he enlisted in the Air Force in 1998, he began a long period of stable income, which enabled him to pay his bills. Income stability continued until he was laid off from his job in March 2009. Although he was unemployed for five months, he continued to pay his debts to the best of his ability. However, when the business failed, he lacked sufficient funds to pay the large debts incurred by the business. This necessitated filing for bankruptcy a second time to resolve his business debts. Applicant manages his monthly finances and bills as he has sufficient income. He and his wife do not live beyond their financial means.

Applicant met his legal obligation when he timely filed his federal and state tax returns each year. He took action to resolve his 2008 federal tax debt seven months after he filed his return, as confirmed by the IRS. His business partner worked with the state revenue department on the resolution of the sales tax debt remaining at the close of their business, which is fully resolved. Since he never received the letters sent to him by the state revenue department seeking payment of the taxes owed, the state garnished his wages. He fully resolved this tax debt before a lien was issued by the state.¹²

The ultimate issue is not simply whether all his debts are paid: it is whether his past financial circumstances raise concerns about his fitness to hold a security clearance. After a complete review of the evidence of record and the actions taken by

¹²Recently, the Appeal Board issued a decision denying an Applicant's security clearance after the Applicant repaid the IRS more than \$100,000 through a wage garnishment for taxes owed over a period of 10 years. In this case, the Appeal Board stated that "a person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." The Appeal Board noted that a person who has a history of failing to file [emphasis supplied] income tax returns does not demonstrate a high degree of judgment and reliability required for access to classified information, citing ISCR Case No. 98-0608 (App. Bd. Jun. 27, 2000). The Appeal Board appears to have been troubled by the fact that the Applicant did not file his tax returns and took no action to pay his taxes until his wages were garnished. According to the Appeal Board, the failure to file taxes or to pay overdue taxes until garnishment action is taken significantly undercuts the strength of the Applicant's filing of his tax returns three years before his hearing. Two key factors emphasized by the Appeal Board, failure to file tax returns and garnishment, are not present in Applicant's case. ISCR No. 12-05043 (App. Bd. Oct. 30, 2014).

Applicant to manage his debts, a security concern raised by his past financial circumstances has been mitigated because he acted responsibly under the circumstances and has properly managed his income and expenses since returning to steady employment in 2011. (See AG ¶ 2(a)(1).)

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	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 a security clearance is granted.

MARY E. HENRY
Administrative Judge