



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-02532
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

October 14, 2015

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on February 28, 2013. (Government Exhibit 1.) On December 4, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on December 30, 2014 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 10, 2015. This case was assigned to me on February 18, 2015. The Defense Office of Hearings and Appeals (DOHA) issued notices of hearing on February 4, and April 8, 2015. I convened the hearing as scheduled on May 20, 2015. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf, his wife also testified, and he submitted Applicant Exhibit A, also admitted without objection. Applicant asked that the record

remain open for the receipt of additional documents. Applicant submitted Applicant Exhibit B on June 4, 2015, and Applicant Exhibit C on June 11, 2015. Both exhibits were admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 1, 2015. The record closed on June 12, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 61 and married. He is employed by a defense contractor, for whom he has worked 19 years and 11 months as of the date of the hearing, and seeks to retain a security clearance in connection with his employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all four subparagraphs in the SOR under this Paragraph. Those admissions are findings of fact. He also submitted additional information to support his request for a security clearance.

Applicant retired from the United States Army in 1995 after 20 years of service. He started work for his current employer almost immediately. He has had a security clearance for approximately 35 years, without a problem. (Government Exhibit 1 at Sections 13A and 15; Tr. 24-26.)

Applicant and his wife have been together for 20 years, and married for 12. In approximately 2008 she began having serious medical issues. This is what created their financial difficulties. Specifically, she was diagnosed with an inoperable brain tumor, which caused severe long- and short-term memory issues, and other physical issues. Since then she has had her thyroid surgically removed, and was due for back surgery due to degenerative disk disease this year. However, she was recently informed by her doctors that the surgery was not possible. She testified, "He gives me at least less than six months and I'll be in a wheelchair." (Tr. 47.)

Applicant's wife took care of the family finances before her illness. During that time she was gainfully employed as an insurance broker. When she was diagnosed with a brain tumor she lost her job and her driver's license almost simultaneously. This had a severe financial impact because they lost her income almost immediately in early 2010. She was having seizures at that time and afraid to tell Applicant that she could not make the credit card payments. At this point she also began running up debts on the credit cards listed in the SOR that she knew they could not pay. She testified, "I have some shame for what I did. But I think I just kind of had like a complete melt down when I lost everything." She went on to say, "I just went into a really deep, deep depression. And when I was there, I didn't have to think about anything." Applicant did not know about

the past-due indebtedness until he was interviewed by Government investigators in connection with his security clearance renewal, then confronted his wife concerning the situation. (Applicant Exhibit A at 1; Tr. 27-29, 32-35, 46-47.)

Regarding the fact that she did not tell Applicant what she had done and the full extent of the debt situation, she testified:

I didn't go to him and tell him. I know he knew that I was hurting. I really messed up because, like I said, my whole world crumbled. It just went out from me. . . . So everything was just coming down on top of us. And then I was trying to figure out what I was going to do with my life, you know. When somebody tells you that you have [a] brain tumor. They basically told me that it was too far in and anymore I eventually wouldn't wake up. So, it's hard, you know. . . . I knew what I was doing was wrong. . . . [Oh], what are you going to do to pay the bills? It was all of this. . . . I just should have never done that. Like I said, he is the most honorable man I ever met in my life. And I will never, ever hurt him again.

(Tr. 68-69.)

The SOR lists four delinquent debts, totaling approximately \$67,790. The existence and amount of the debts is supported by credit reports dated March 12, 2013; May 14, 2014; February 10, 2015; and May 20, 2015. (Government Exhibits 2, 3, 4, and 5.)

The current status of the debts is as follows:

1.a. Applicant admitted that he owed \$23,827 for a past-due credit card debt. Applicant's wife testified that he did not know about this account that she opened. Since his wife lost her job and income they have continued to pay either the bank or the collection agencies on this debt on a consistent basis, as shown by bank statements submitted by Applicant. Applicant's wife maintains communication with the creditor. (Applicant Exhibits A at 2, 4-6, B at 7-16; Tr. 35-45.) This debt is being resolved.

1.b. Applicant admitted that he owed two past-due credit card debts to a bank, one for 18,862, and the second for \$10,929. Applicant knew about one of these accounts, but did not know what his wife had charged to it. Since his wife lost her job and income they have continued to pay either the bank or the collection agencies on this debt on a consistent basis, as shown by bank statements submitted by Applicant. After the hearing Applicant was presented a settlement on the \$10,929 account. Applicant has made two payments towards that debt. (Applicant Exhibits A at 2, 7-12, 16-17, B at 7-16, C at 3; Tr. 45-49, 54-55.) These debts are being resolved.

1.c. Applicant admitted that he owed \$13,646 for a past-due credit card debt. Since his wife lost her job and income they have continued to pay either the bank or the collection agencies on this debt on a consistent basis, as shown by bank statements submitted by Applicant. Applicant's wife maintains communication with the creditor. (Applicant Exhibits A at 2, 13-15, B at 7-16; Tr. 58-60.) This debt is being resolved.

1.d. Applicant admitted owing a past-due credit card debt in the amount of \$526. Applicant's wife testified that they are disputing that debt because it has been paid. Due to her memory issues Applicant's wife was unable to confirm that this debt has been paid. (Tr. 49-50.) Applicant called the collection agency on this account on December 14, 2014, and informed them that Applicant is disputing the debt. (Applicant Exhibit A at 2.) The two most recent credit reports in the record, from 2015, do not show this debt. (Government Exhibits 4 and 5.) Under the particular circumstances of this case, particularly given the fact that Applicant and his wife have both willingly and credibly testified about their debt situation, I find that this debt is in dispute.

Applicant's current financial situation is stable. He is able to pay his monthly debts. They will be in even better financial condition now that his wife is receiving her Social Security disability payments. He sold two cars to help out their financial situation, thereby reducing monthly expenses. (Tr. 51-52, 60-61, 64-65.)

In conclusion Applicant said:

I am responsible for them [the debts], and together my wife and I will make sure that they get paid. We are not just going to let them go by. . . . I think if we are going to do anything like that, we probably already would have filed for Bankruptcy. But that's just too easy a way to go. You know, if you have a debt, pay your debt. That's how I feel. And that was the way I was raised.

(Tr. 70.)

Mitigation

Applicant submitted documentation showing that he is a respected employee and person. Applicant Exhibit B at 2-5 contains letters of recommendation from several co-workers, and a personal friend.

Applicant's deputy site manager has known Applicant for 18 years. He first got to know Applicant when the deputy site manager was still on active duty with the Army as a company first sergeant. The letter states, "[Applicant] is a true professional with high ethical standards and customer interaction talents."

Applicant's division manager has known Applicant since 2000. In 2008 he appointed Applicant as the deputy division manager. The witness describes Applicant as a man of "integrity."

A co-worker who has known Applicant for nine years states, "[Applicant's] work ethics are of the highest caliber and his integrity and patriotism is without question."

The final letter is from a friend of Applicant's, who has known him since 2012. The writer is a vice-president in a national veterans non-profit organization. He states, "[Applicant] is a very reliable person. He has a strong work ethic and strong moral character."

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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 avoided drawing 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, "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant, by his own admission, and supported by the documentary evidence, had four delinquent accounts that he could not resolve. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “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.” In addition, AG ¶ 20(b) states that disqualifying conditions may be mitigated where “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.”

The evidence shows that both of the above mitigating conditions apply to Applicant. It appears that the vast majority of this debt was incurred as a result of his wife’s very severe illness, the depression that she suffered due to the diagnosis of an inoperable brain tumor, and her decision to hide from Applicant the true extent of the debt situation for several years. The loss of her job income also had a tremendous impact. Applicant and his wife have worked diligently over many years to resolve the debts, consistently paying the original creditors or the successor collection agencies on a regular basis. Based on the particular facts of this case, I find that he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant has not received financial counseling. However, as found above, his current financial situation is stable. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

Applicant has acted in a way that shows good judgment, making the best he could out of an incredibly difficult and emotional situation. As the DOHA Appeal Board has said, “An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has taken significant actions to implement that plan.”¹ All of these mitigating conditions apply to the facts of this case.

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 the relevant circumstances. 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 administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. While Applicant has had financial problems in the past, they are being resolved, and he has the knowledge and ability to avoid such problems in the future.

Under AG ¶ 2(a)(2), I have considered the facts of Applicant’s debt history. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I

¹ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

conclude Applicant has mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports granting his request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 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 access to classified information is granted.

WILFORD H. ROSS
Administrative Judge