



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



In the matter of:

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) ISCR Case No. 14-04480
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Applicant for Security Clearance

Appearances

For Government: Caroline Heintzelman, Esquire, Department Counsel

For Applicant: *Pro se*

08/31/2015

Decision

DAM, Shari, Administrative Judge:

Applicant completed payments on a Chapter 13 bankruptcy in 2013. His 2010 foreclosure is resolved. He has been making payments on a 2012 tax liability since 2013. Financial security concerns are sufficiently mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On December 15, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On October 31, 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 Department of Defense for SORs issued after September 1, 2006.

On December 4, 2014, Applicant answered the SOR (Answer), and requested a hearing. On April 27, 2015, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On June 5, 2015, DOHA issued a hearing notice, setting the case for July 1, 2015. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant offered exhibits (AE) A through F into evidence. All exhibits were admitted. Applicant testified, as did his wife. The record remained open until July 21, 2015, to give Applicant time to submit additional information. Applicant timely submitted three exhibits, which I marked as AE G, H, and I, and admitted into the record without objection. DOHA received the hearing transcript (Tr.) on July 9, 2015.

Findings of Fact

Applicant admitted the four allegations contained in the Statement of Reasons and provided explanations. His admissions are accepted as factual findings.

Applicant is a 55-year-old employee of a defense contractor since 2013. He is married and has two adult children. He served on active duty in the U.S. Army from 1979 until 1983. In 1990 he enlisted in the Army National Guard. He was deployed to the Middle East in 2006 for six weeks. He retired from the National Guard in 2008. He was a master sergeant, E-8, at the time of his retirement. He received an honorable discharge. During his service he received his state's Distinguished Service Cross and Good Conduct Medals, along with academic awards. He held a security clearance while in the military. He completed two years of college. Prior to his current position, he worked for another defense contractor, and in private industry, including his own business from 2011 to 2013. (Tr. 20-24.)

Applicant's financial problems began in 2008 after he left one state (State-1) to move to his home state (State-2) in order to help sick family members and assist other members. After he moved, he was unable to sell the home in State-1, resulting in having two mortgages to pay that totaled \$3,000 to \$4,000 each month. (Tr. 27-28, 30, 32.) Applicant secured two short sales for the property, but the bank would not authorize the sales. (Tr. 58.) The bank foreclosed on the property in State-1 in 2010. The day before this hearing, Applicant sold his residence in State-2 for \$19,000 less than what he owed. His father-in-law gifted him and his wife that amount of money. (AE E.)

The SOR contained four allegations. The status of each allegation is as follows:

1. Applicant filed a Chapter 7 bankruptcy in January 2010. The case was converted to a Chapter 13 bankruptcy in January 2011. In the summer of 2013, he paid the \$26,000 balance owed on the bankruptcy. His father-in-law gave Applicant and his wife the money as a part of his wife's future inheritance. The case was closed in November 2013. (SOR ¶ 1.a; Tr. 32-36, 49; Answer.)

2. The allegation contained in SOR ¶ 1.b references the above Chapter 13 bankruptcy.¹ (Tr. 32-6; Answer.)
3. In July 2013 Applicant established a monthly payment plan with the Internal Revenue Service to pay a 2012 tax liability of \$21,660. The taxes owed accrued while Applicant owned a business with a partner in 2012. Applicant and his partner lost a large contract that they anticipated would help pay taxes. He trusted his partner to manage their taxes, but he failed to do so. The current balance of the debt is \$18,173. (SOR ¶ 1.c; Tr. 36-38; AE F, G; Answer; GE 2.) He also testified that he owes about \$9,000 for federal income taxes for 2013. He is making payments on those taxes.² (Tr. 40-41, 53.)
4. Applicant testified that the mortgage loan mentioned in SOR ¶ 1.d, pertained to the foreclosure on the home he owned in State-1. Any deficiency was resolved through the Chapter 13 bankruptcy, mentioned above. He received a \$3,000 check from the bank as an overpayment. (Tr. 48-49, 56; Answer.)

Applicant submitted a budget that his accountant reviewed. Applicant's net monthly income is \$8,800 and his expenses are \$4,885, including a \$450 payment to the IRS. He has about \$4,000 remaining at the end of the month. (AE H.) He does not have a mortgage or rental payment because he and his wife recently moved in with his elderly father-in-law and mother-in-law to help care for them. His wife started working and is earning \$500 a month. (Tr. 44-46; AE B.) Applicant's accountant assisted him in resolving credit issues. The accountant provided a statement that noted that Applicant and his wife "are current with all of their accounts or outstanding debts or mortgages." (AE C.)

Applicant submitted letters of recommendation from friends, co-workers, church members, a pastor, and his father-in-law. The authors speak of Applicant's trustworthiness, dedication to his family and country, dependability, and honesty. (AE B, I.)

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 (AG) list

¹ The allegation in this paragraph cites a different docket number. Applicant stated he never filed a Chapter 13 bankruptcy, only the Chapter 7 that was converted into the Chapter 13. This appears to be a clerical or filing issue with the clerk's office. (Tr. 35; GE 2.)

² The SOR did not allege unpaid federal taxes for 2013. That fact will not be considered in an analysis of the disqualifying conditions, but may be considered in analyzing mitigating conditions and in the whole-person analysis.

potentially 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny 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."

A person applying for access to classified information seeks to enter 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 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads:

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 two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant began experiencing financial difficulties after he moved to State-2 in 2008 to help family members. He has been unable to resolve all of his delinquent debt. The evidence is sufficient to raise both disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Because Applicant continues to make payments on his federal tax debts, AG ¶ 20(a) does not provide mitigation. Applicant's inability to sell his prior residence in State-1 contributed to his financial problems and resulted in a foreclosure. Those circumstances are unlikely to recur, and were possibly beyond his control. His business decisions were within his control. He started a repayment plan for his unpaid 2012 federal taxes in July 2013, soon after they were due, indicating his intention to take responsible steps to resolve them. He tried to prevent a foreclosure on his home in State-1 through short sales, but the bank refused his efforts. There is sufficient evidence to establish mitigation under AG ¶ 20(b). Applicant did not document participation in credit or other financial counseling. However, he presented evidence that he consulted with his accountant about his budget and credit issues. He completed payments on the Chapter 13 bankruptcy in November 2013. The foreclosure was completed in 2010. His finances appear to be under control. AG ¶ 20(c) applies. He made payments on his tax debt since July 2013, demonstrating a good-faith effort to resolve his unpaid taxes. He said he is also paying his 2013 taxes. AG ¶ 20(d) applies. Applicant did not dispute the tax liability. Hence, AG ¶ 20(e) is not applicable.

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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a 55-year-old employee of a defense contractor since 2013. He retired from the Army National Guard after serving for 20 years. People that know him attest to his patriotism, honesty, and strong character. He acknowledges his past financial problems, including tax issues. He has made payments to the IRS since July 2013 and will continue to do so until his liability is resolved. Other than the alleged financial issues, there is no other adverse evidence in the record. After observing his demeanor and evaluating his testimony,

which was credible and forthright, I am confident that he will continue to pay his legal obligations. There is no evidence indicating that the outstanding tax debts create a potential for pressure, exploitation or duress.

Overall, the record evidence leaves me without doubt or concerns as to Applicant's present eligibility and suitability for a security clearance. Given his awareness of the potential negative effect additional delinquent debts could have on his employment, the likelihood that similar issues will occur is minimal. Applicant sufficiently met his burden to mitigate the security concerns arising from financial considerations.

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
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Subparagraphs 1.a to 1.d:	For Applicant
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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.

SHARI DAM
Administrative Judge