



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-05803

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

03/25/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On February 7, 2015, 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 March 28, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on June 25, 2015. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections

and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on July 22, 2015.

Applicant responded to the FORM with an undated letter, which I have marked Applicant's Exhibit (Ex.) A. In the letter, Applicant wrote he was "open to any suggestions on how to report or display this evidence better so that it is sufficient to overcome the *prima facie* case against [him]." He also wrote that he was "wondering if it would be possible to get assistance with preparing this information to better demonstrate these qualities and prove [his] situation as requested."

The case was assigned to me on September 1, 2015. Because of the above comments, I sent Applicant an e-mail on September 24, 2015, explaining his rights, and providing him with additional options, which included changing his request to a hearing or providing additional documentary evidence. I did not hear back from him, so I had a conference call with Applicant and Department Counsel on October 15, 2015. Applicant stated that he did not receive the e-mail. I explained his rights and options, and I forwarded the e-mail to him. Applicant elected the option to submit additional documentary evidence. The record was held open until November 20, 2015, and extended to December 2, 2015. Applicant submitted e-mails and attached documents, which were marked Ex. B through J. The Government exhibits included in the FORM and Ex. A through J are admitted in evidence without objection. E-mail correspondence has been marked Administrative Exhibit (AE) I.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He worked for a different defense contractor from 2000 until shortly before he obtained his current job in 2011. He seeks to retain his security clearance. He has a bachelor's degree. As of 2012 when he submitted his Questionnaire for National Security Positions (SF 86), he had never married and he had no children.¹

In about 2007, Applicant sought to invest in the growing real estate market. He took online classes in real estate investing. He purchased a rental property in another state for \$125,000. He was contacted by a company that offered him an opportunity to invest in real estate transactions. The company would use Applicant's credit to purchase properties and pay Applicant 9% of the transaction. Applicant estimated that the company took out about \$200,000 from 20 to 30 credit card accounts that were opened in his name. The company paid the accounts for a period and then disappeared in about 2008. Applicant and the credit card companies were swindled.²

¹ Items 5.

² Items 4-6; AE A, B.

The company and individual were investigated by the U.S. Postal Inspection Service for the Department of Justice. About 60 individuals, including Applicant, were identified as victims of the scam.³

Applicant retained a debt-settlement company and began addressing his accounts long before he submitted his SF 86 in 2012 and before the SOR was issued in 2015. He paid the company \$1,100 per month. It is unclear whether he is still utilizing the company. Several of the creditors obtained judgments against Applicant and garnished his wages. A credit report obtained for his background investigation in January 2012 listed multiple accounts that had been paid or settled.⁴

The SOR alleges a mortgage loan of \$137,278 that was \$15,000 past due, nine delinquent debts totaling about \$75,000, and four unpaid judgments totaling about \$33,700. However, three of the judgments appear to be based on three underlying delinquent debts that are also alleged in the SOR: SOR ¶ 1.h (\$8,529 debt) and SOR ¶ 1.b (\$7,783 judgment to same credit card company); SOR ¶ 1.f (\$8,857 debt) and SOR ¶ 1.c (\$12,032 judgment to same bank); and SOR ¶ 1.e (\$1,827 debt) and SOR ¶ 1.n (\$1,667 judgment to same credit card company).⁵

Applicant had about a six-month gap between the first and second renters of his investment property. The second renters moved out without paying all their rent and left the house in a shambles. Applicant could not afford the amount it would cost to repair the house and return it to a rentable condition. He could not afford the mortgage loan payments without receiving rent. The house was lost to foreclosure. There is no indication that Applicant owes any deficiency on the loan. The loan does not appear on the two most recent credit reports in evidence.⁶

Applicant paid and settled additional accounts after 2012. In January 2013, he made payments toward two debts owed to the creditor identified in SOR ¶ 1.a (\$4,997 debt alleged). The law firm representing the creditor indicated that both debts were paid in full. The creditor later wrote that the law firm was mistaken, and that the accounts had not been paid in full. However, the creditor indicated it was not pursuing additional collection actions.⁷

Court records show that eight payments were made by garnishment toward the \$7,783 judgment identified in SOR ¶ 1.b. Court records show that four payments were

³ Items 4-6; AE A.

⁴ Items 4-7; AE A, B, G.

⁵ Items 4, 5, 7-12.

⁶ Items 4-7, 10; AE H.

⁷ Items 4-7; AE B, E, G.

made by garnishment toward the \$12,032 judgment identified in SOR ¶ 1.c. The judge released the garnishment in October 2012.⁸

In December 2015, Applicant and the bank agreed to settle the \$12,210 judgment (\$15,434 current balance) identified in SOR ¶ 1.k for \$10,787, payable by 30 monthly payments of \$360.⁹

None of the remaining SOR debts and judgments are reflected on Applicant's most recent credit reports. They were successfully disputed, removed voluntarily by the creditor because of Applicant's circumstances, or fell off because they went past the seven-year reporting window. Applicant's current finances are sound. He is able to pay his older debts and judgments without accruing new delinquent debt.¹⁰

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 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.

⁸ Items 8, 10; AE D.

⁹ Items 4, 6, 10, 11; AE I, J.

¹⁰ Items 7, 10; AE A-C, H.

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 in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant had delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the 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 enthusiasm for real estate investing led him to poor choices. His rental property was vacant for a period, and his last renters did not pay all their rent and left the home in shambles. His other decision was worse. He ignored the old adage, "if it sounds too good to be true, it probably is," and he let individuals who turned out to be criminals have access to his credit. He estimated that 20 to 30 credit cards were opened in his name with balances around \$200,000 when they absconded with the cash. Applicant and the credit card companies were left holding the bag. Applicant chose not to take the route that would have been pursued by many in his circumstances – filing bankruptcy. Instead, he retained a debt-settlement company and set about attempting to resolve his financial problems.

What must be remembered is that Applicant is a victim, a foolish victim under the circumstances, but a victim nonetheless. His path has not been perfect. There are accounts that have not been paid. However, he is continuing in his efforts.

I find that Applicant established a plan to resolve his financial problems, and he took significant action to implement that plan. He acted responsibly under the circumstances, and he made a good-faith effort to pay his debts. There are clear indications that his financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(c) and 20(d) are applicable. AG ¶¶ 20(a) and 20(b) are partially 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.

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 this whole-person analysis. I also considered Applicant's stable work history.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated 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:	For Applicant
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Subparagraphs 1.a-1.n:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge