



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



In the matter of:)
)
) ISCR Case No. 11-06676
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

08/29/2014

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 April 23, 2014, 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 May 16, 2014, and requested a hearing before an administrative judge. The case was assigned to me on July 21, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 24, 2014, scheduling the hearing for August 13, 2014. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 7 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through G, which were admitted without objection. DOHA received the hearing transcript (Tr.) on August 21, 2014.

Findings of Fact

Applicant is a 45-year-old employee of a defense contractor. He has worked for his current employer since August 2010. He served in the U.S. military from 1988 until he was honorably discharged in 1991. He is applying for a security clearance. He attended college for a period, but he did not earn a degree. He is divorced with two adult children.¹

The SOR alleges an unpaid \$11,333 judgment (SOR ¶ 1.a) and a federal tax lien of \$5,391 for unpaid taxes (SOR ¶ 1.b). Applicant indicated that he paid the back taxes and he has been paying the judgment.

Applicant was self-employed as a contractor in the home construction industry from 1996 until he was hired by his current employer in 2010. He did not pay all his federal income taxes when they were due. His business severely declined during the housing crisis and never recovered. He was unable to pay all his bills, and several debts became delinquent.²

Applicant listed his unpaid taxes and the delinquent debt alleged in SOR ¶ 1.a on his Questionnaire for National Security Positions (SF 86), which he submitted in October 2010, and he discussed them during his background interview in November 2010. He told the interviewer that he did not have the money to pay the taxes and the judgment at that time because of his lack of work due to the downturn in the housing market. He stated that he intended to pay the debts.³

The IRS filed a \$5,391 tax lien against Applicant in 2009 for unpaid taxes for every tax year from 1999 to 2006. Applicant also owed for tax year 2007. Applicant paid the taxes through payments and by the IRS withholding refunds. His 2010 income tax refund was withheld to pay his 2001 taxes and part of his 2002 taxes. In July 2011, Applicant paid the \$1,285 tax bill for 2007 with a loan from his girlfriend. In March 2013, the IRS withheld \$1,524 from Applicant's refund for tax year 2012 to pay most of the taxes due for tax year 2003. Applicant paid the remaining \$57 owed for tax year 2003 in March 2013. The final payment of \$2,955 was made to the IRS on May 5, 2014, again with a loan from Applicant's girlfriend. The IRS released the lien indicating that Applicant "has satisfied the taxes listed below and all statutory additions."⁴

¹ Tr. at 18, 21, 23-24, 38; GE 1, 2.

² Tr. at 18-19, 24, 31; GE 1, 3, 4.

³ GE 1, 4.

⁴ Tr. at 19-20, 25-30; GE 3-7; AE A, D, E.

The creditor alleged in SOR ¶ 1.a obtained a judgment against Applicant in February 2009. The judgment is accumulating interest. The credit reports all show a judgment of \$11,333. In August 2012, the creditor showed a total due of \$16,425. It is likely that the judgment was for \$11,333, and \$16,425 was the amount due with interest. Applicant has been paying the judgment for more than two years. In 2012, Applicant agreed to pay \$400 per month until the judgment was satisfied. He has been unable to maintain that schedule. He has stayed in contact with the creditor, who has accepted the payments that Applicant was able to make.⁵ Applicant documented the following payments:

DATE	PAYMENT
July 23, 2012	\$2,000
July 30, 2012	\$100
August 3, 2012	\$100
August 6, 2012	\$200
August 17, 2012	\$100
August 27, 2012	\$200
September 13, 2012	\$300
September 28, 2012	\$200
October 9, 2012	\$100
October 15, 2012	\$100
October 31, 2012	\$100
December 19, 2012	\$200
May 31, 2013	\$400
June 22, 2013	\$200
July 3, 2013	\$200
July 15, 2013	\$300
July 29, 2013	\$300
August 23, 2013	\$300
October 9, 2013	\$500
October 21, 2013	\$300
January 15, 2014	\$400
June 26, 2014	\$100
August 5, 2014	\$200 ⁶
TOTAL:	\$6,900

Applicant paid other debts that were not alleged in the SOR. His mother had health problems that prevented him from paying more toward the judgment in 2014. He was also dealing with his tax problems. He estimated that he still owes about \$10,000 toward the judgment. He stated that with his tax problems resolved, he is better able to

⁵ Tr. at 18, 30; GE 1-7; AE D, E.

⁶ GE 2-4; AE B, G.

address the judgment. He credibly testified that he will continue with the payments until the judgment is satisfied. He has not received financial counseling.⁷

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.

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).

⁷ Tr. at 19-21, 30-37; GE 1-7; AE D, E.

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. Two are potentially applicable in this case:

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

Applicant accumulated delinquent debts, and he was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate 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 was self-employed in the housing industry. His business suffered when the housing market collapsed. Those events were beyond his control. His tax issues were not beyond his control.

Applicant has worked for his current employer since August 2010. He has been working on his financial problems for several years. He paid debts that were not alleged in the SOR. His taxes were paid through a combination of payments and the IRS withholding his refunds. The final payment was made in May 2014. He has been steadily paying the judgment for more than two years. He documented \$6,900 in payments. He estimated that he still owes about \$10,000. With his tax problems resolved, he is better able to address the judgment. He credibly testified that he will continue with the payments until the judgment is satisfied.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that Applicant 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 my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's honorable military service, the factors that led to his financial problems, and his credible testimony that he will continue to pay the judgment. As indicated above, an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. I find that Applicant has established a plan to resolve his financial problems, and he has taken significant action to implement that plan.

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
Subparagraphs 1.a-1.b:	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.

Edward W. Loughran
Administrative Judge