



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



In the matter of:)
)
) ISCR Case No. 11-12170
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: Carl A. Morgan, Esq.

05/20/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On January 15, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 DOD on September 1, 2006.

Applicant answered the SOR on January 31, 2013, and requested a hearing before an administrative judge. The case was assigned to me on March 30, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 22, 2013. I convened the hearing as scheduled on May 9, 2013, by video teleconference.

The Government offered Exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant testified and offered exhibits (AE) A through L, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 15, 2013.

Procedural Issues

Department Counsel moved to amend the SOR by withdrawing subparagraphs 1.a and 1.b. There was no objection and the motion was granted.¹

Findings of Fact

Applicant denied the remaining two SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 36 years old. He has a bachelor's degree and is working on a master's degree. He married in 2005. He and his wife separated the latter part of 2007, and they divorced in February 2008. There are no children from the marriage. Applicant has an 18-year-old child from a previous relationship. He has worked for his current employer, a federal contractor, since 2001. He has held a secret security clearance since 2001.²

When Applicant married his wife, she was attending school. They began experiencing financial difficulties due to his wife's spending money beyond their means. She managed the finances during their marriage. Applicant was unaware that she was not paying some of their bills until he began getting calls from creditors that the payments were past due. His wife would then pay the delinquent payments. During their marriage, Applicant's wife held a job for only a few weeks.³

Applicant and his wife purchased a boat in 2006 or 2007. At the time, they could afford it. His wife continued to spend money beyond their income, and their financial situation became strained. It reached its breaking point in late 2007, and they divorced as a consequence of it in 2008. As part of their divorce settlement, Applicant's wife agreed to take possession of the boat and continue making the payments on the loan. She failed to make the payments. Applicant took possession of the boat. He then hired an attorney in 2009 to help him resolve the financial issues he was experiencing due to his wife's failure to make payments on the boat and issues with her student loans. Applicant eventually reached a settlement agreement with the creditor and paid the settlement to resolve the boat debt and a credit card debt with the same creditor.

¹ Tr. 11-14.

² Tr. 24, 38, 42-44.

³ Tr. 26-27.

Applicant explained as his marriage was dissolving he was trying to maintain payments on his expenses and got behind on paying this credit card.⁴

The debts in SOR ¶¶ 1.c and 1.d are student loans. Applicant denied that these loans belonged to him. He was unaware the loans existed until after he was divorced. He never gave his wife permission to sign his name, electronically, physically, or as a cosigner to any student loan. He began receiving letters from creditors about his wife's unpaid student loans. He contacted the creditors to alert them his ex-wife used his name without his consent. When the creditors did not respond, he hired an attorney. He testified that his wife forged his name on loan documents and fraudulently obligated him to the loans. A civil complaint was filed against him on a different student loan not alleged in the SOR, and he successfully had the complaint dismissed. Another creditor removed his name from a different student loan because they concluded that he did not authorize the loan.

Regarding the SOR debts, Applicant received letters from the student loan creditors advising him the debts were delinquent. He sent the creditors affidavits attesting that he did not sign the loan contracts, and his ex-wife fraudulently signed his name, committing forgery. Applicant's attorney has been helping him resolve the fraudulent student loans. Applicant also filed a report with the police for identity theft. Applicant intends to continue disputing the debts and resolve them with the creditors. If he is unsuccessful, he intends to dispute them in court. If the court determines he is responsible for the student loans of his ex-wife, he will abide by the court's order. These debts are being resolved.⁵

Applicant has no other delinquent debts. He pays his bills on time. He has approximately \$25,000 in savings and \$150,000 in a retirement account. He lives within his means. He did not have financial problems before he married and has not had them since his divorce, except those created by his ex-wife. I found Applicant's testimony credible.⁶

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.

⁴ Tr. 25-29, 40-41; GE 2; AE C, D, F, I. These two debts alleged in SOR ¶¶ 1.a and 1.b, were withdrawn by the Government. They are not considered for disqualifying purposes, but will be considered when analyzing the "whole person" and for credibility purposes.

⁵ Tr. 25, 29-35; AE G, H, J, K, L.

⁶ Tr. 25, 39-40, 44-48.

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. Likewise, I have not drawn 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, 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 and 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 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 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant credibly testified that the alleged delinquent debts are not his debts. He has been proactive in attempting to resolve the issues associated with his ex-wife forging his name to obtain student loans. He has been working with an attorney, and as a result some student loan creditors have cleared him of responsibility acknowledging that the debts did not belong to him. He is actively working to remove his name from the remaining debts that are alleged in the SOR. Applicant does not have a history of not meeting his financial obligations. He lives within his means. He is willing and able to satisfy debts he is responsible for. He is not responsible for the alleged debts. I find none of the above disqualifying conditions apply. Therefore, an analysis of mitigating conditions is not necessary because he has refuted the SOR allegations.

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 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.

Applicant is 36 years old. He does not have a history of financial problems. His ex-wife forged his name to obtain her student loans. Applicant was unaware that she fraudulently obligated him. She also failed to make payments on a boat loan that she agreed to as part of their property settlement. Applicant later resolved that debt by taking possession of the boat and paying a settlement with the creditor. He does not intend to pay his ex-wife's student loans and his attorney is actively working to remove Applicant's name from the student loans. If the issue must be resolved in court, Applicant will abide by the court's ruling. Applicant's testimony was credible and he has been aggressively working to resolve these matters. He lives within his means and has become more conscientious about managing his own finances. Overall, the record evidence leaves me with no questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant successfully mitigated the security concerns arising under the financial considerations guideline.

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:	Withdrawn
Subparagraphs 1.c-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 a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge