



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



In the matter of:)	
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Applicant for Security Clearance)	ISCR Case No. 11-13065

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

06/19/2013

Decision

LYNCH, Noreen, A., Administrative Judge:

On January 17, 2013, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 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 in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on March 28, 2013. A notice of hearing was issued on April 5, 2013, scheduling the hearing for May 9, 2013. Government Exhibits (GX) 1-5 were admitted into evidence, without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-I, which were admitted without objection. I kept the record open until June 10, 2013, for Applicant to submit additional documentation. He timely submitted a packet marked as AX J which was entered into the record without objection. The transcript (Tr.) was received on May 21, 2013. Based

on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations), with explanations.

Applicant is a 45-year-old engineer employed by a defense contractor. He graduated from high school and received his undergraduate degree in 2000. Applicant served honorably in the U.S. Army from 1992 until 1999. His marriage ended in divorce in 1996 (AX A) He has one grown child from his marriage. Applicant has held a security clearance since 1989. (Tr. 59) He has been with his current employer since 2000.

Applicant was awarded custody of his daughter when his marriage ended. (AX B) His ex-wife was ordered to pay child support, but she did not comply with the order. In 1998, his ex-wife kidnapped Applicant's daughter and took her to another state. (AX F)

In 2004, Applicant transferred to a different state with his same employer, and he purchased a home. In 2004-2005, Applicant accrued large debts and legal fees (\$19,000) as a result of a custody law suit filed by his exwife. (AX C) The suit was eventually dismissed. (AX D) However, Applicant was saddled with a great amount of debt, including attorney fees and travel expenses for his daughter to visit her mother.¹ Before this time, he had not had any financial difficulties. As a single parent, he provided for his daughter and was paying her college tuition. By 2007, he was experiencing difficulty with paying his mortgage and other bills.

In 2007, he was offered a position with the same company in a less expensive geographic area, and Applicant decided to move. His house did not sell despite lowering the price and using a realtor for advice. The real estate market decline affected sales of homes, and Applicant's home went to foreclosure in 2009.

In 2008, Applicant began earning a steady income. He was financially stable and saving money. In 2009, he was in a position to pay his delinquent debts. His security clearance investigation began at this juncture. During his subject interview, he discussed his delinquent debts. He believed that he would be contacted again after the interview to discuss how he would remedy the financial issues that were causing a security concern. He thought about filing for bankruptcy but was advised that would not be a good way to resolve his debts, given the fact that he holds a security clearance. (Tr. 48)

The SOR alleges six delinquent debts for collection accounts, medical accounts, and a mortgage loan that went to foreclosure. The approximate amount of delinquent

¹Applicant's wife moved to Europe with her daughter at one point and wanted Applicant to pay for travel expenses.

debt is approximately \$24,000. The balance on the mortgage account that foreclosed is allegedly \$219,062.

Applicant researched his credit and obtained credit reports. He could not determine who held the \$240 medical account alleged in SOR 1.a. He is willing and able to pay the bill, but the credit bureau did not provide any help in locating the account. (Tr. 40) He found the account holder for the medical bill and paid the amount in full in May 2013. (AX J)

The account for \$4,921, which is a charged-off credit account is in repayment status. (SOR 1.b) Applicant was paying the account, but he received a settlement offer with a reduced amount (\$904), and he has paid the account in full. (AX I)

Applicant has a \$6,606 collection account (SOR 1.c). When he contacted the account holder to pay the debt, he learned that the account was sold to another entity. However, the company is no longer in business. He attempted to pay the original account holder, but they refused to accept payment. (Tr. 42) Applicant submitted information post-hearing that confirms that the account was sold, but reflects a zero balance. (AX J)

Applicant obtained a second job in July 2012 to help pay his delinquent debts. He submitted documentation that his second mortgage of \$30,000 is resolved as he provided a 1099-C. (AX E) However, the first mortgage of \$219,000 (SOR 1.d) is still in an unknown status. (Tr. 34) Applicant contacted the mortgage company but has not received information. In 2009, the house was sold after the foreclosure, but Applicant has not been able to determine the status, but plans to contact them in writing for an update. (Tr.39) Applicant contacted the mortgage loan account holder and received a letter from them stating that the balance is zero. (AX J) He also contacted the registrar in the county where the property was located to show the state of the deed. He still has not received a response from the registrar's office. ²

Applicant submitted documentation that he has paid \$859 on the account that was 120 days late. (SOR 1.e) (AX J)

Applicant also researched the collection account for \$9,238 (SOR 1.f). He tried to pay the account but the company is no longer in business. He provided documentation to substantiate his claim. (AX I)

Applicant submitted documentation before the hearing that other accounts not listed on the SOR were paid. (GX 2) Applicant also explained that he does not use credit cards. He pays cash for items.

Applicant's net monthly income is approximately \$4,476. His net monthly remainder is about \$600. Applicant maintains a separate checking account. He contributes to a 401(k), which is about \$30,000. He uses a budget and saves. Applicant

²Applicant had mortgage insurance and believes that any deficiency has been resolved.

has incurred no new debts since 2008. His car note is paid. Applicant's fiancée lives with him. They share household expenses. He has not received financial counseling.

Applicant was candid in his explanation that he did not contact some of his creditors earlier due to ignorance and depression. As a single parent, he provided for his daughter, established a new household and paid tuition for his daughter. He was candid when he stated that he should have been more proactive with the creditors in previous years. He disclosed his financial difficulties when he completed his security clearance application. He is remedying his financial difficulties. He has paid the majority of the delinquent accounts and stands ready to rectify any deficiency that there might exist with the mortgage account holder.

Applicant submitted three letters of recommendation from associates in his company. Each letter describes Applicant as a person of honor and character. Applicant is committed to his work and demonstrates great compassion and temperance in all matters. Applicant is described as diligent and professional. He has been attentive in his duty to protect classified information. He is a mentor to young engineers in the company. Applicant is a stable family man with commitment to community and to country. (AX H)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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 avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be relevant:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admits that he has delinquent debts and that his home went to foreclosure in 2009. Consequently, the evidence is sufficient to raise disqualifying condition ¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant had no financial difficulties before the divorce and custody battle that began in 2005. He incurred large legal bills to defend against a lawsuit for custody of his daughter. He provided for his daughter without any child support from his exwife. He was not successful in selling his home due to economic conditions. He believes that there is no deficiency to pay on the first mortgage. If there is, he is able to resolve the deficiency. When he was able, he paid his delinquent debts. His current financial status is stable. He has a savings account and a retirement account. Applicant paid various small accounts before the hearing. He has not acquired any new delinquent debt since 2008. He has not received financial counseling. AG ¶¶ 20 (a), (b), (d) and (e) apply.

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is a 45-year-old employee of defense contractor who has held a security clearance since 1989. He served honorably in the military. He has been employed by defense contractors for a number of years. He obtained his undergraduate degree at night while working. As a single parent, he provided financially for his daughter. His custody battle cost him time and money. He incurred legal fees which he paid but the legal fees prevented him from paying other bills. He obtained a second job. He moved to another state to reduce living expenses. He was not successful in selling his home due to the economic situation. He had mortgage insurance and believes that there is no deficiency owed. The insurer can potentially sue Applicant for the loss, but he is willing to resolve the deficiency if that happens.

Applicant was candid at the hearing and credible in his testimony. He had no financial difficulties until the above described events beyond his control happened in 2004 and 2005. He admitted that he could have been more proactive initially with the accounts. He prioritized financial issues. He tried to contact creditors but was unable to locate some of them. He disclosed his financial situation on his security clearance application. He believed that OPM would get back to him and tell him what he needed to do to resolve the security issues under the financial considerations guideline. Applicant has excellent references from his employer. He has held a security clearance without incident.

Applicant met his burden of proof in this case. Clearance is granted.

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.f: 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 continue Applicant's security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge