



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



In the matter of:)	
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)	
)	ISCR Case No. 12-01703
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

02/18/2014

Decision

LYNCH, Noreen, A., Administrative Judge:

On July 18, 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 November 14, 2013. A notice of hearing was issued on November 27, 2013, scheduling the hearing for December 13, 2013. Government Exhibits (GX) 1-8 were admitted into evidence, without objection. Applicant testified, but did not submit any exhibits for the record. I kept the record open until January 23, 2014 for additional submissions. Applicant provided a packet of documents, which was marked as AX A and admitted into the record without objection. At that time I requested, through Department Counsel, a clarification of the submission. Applicant was provided until February 11, 2014 to submit a clarification of his

document. He provided additional documents, which were marked as AX B and AX C, and the record closed. The transcript (Tr.) was received on December 20, 2013. The record closed on February 18, 2014.¹ 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, with explanation.

Applicant is a 43-year-old facilities resource technician employed by a defense contractor. He graduated from high school and attended a technical college. Applicant is married, but since 2010, he is legally separated. As a result of his marriage, he has two children. Applicant has been with his current employer since June 2011. (GX 1) He has held a security clearance since 2006.

The SOR alleges a May 2010 chapter 13 bankruptcy filing, which is currently pending; a July 2003 chapter 7 bankruptcy, which was discharged in November 2003; and a past-due amount of \$99,000 for a home mortgage loan.

In 2003, Applicant's employer disbanded its business. Applicant eventually found work, but his wage was reduced by \$12 an hour. At the time, his wife was caring for the children and he was the sole provider. In July 2003, he filed for chapter 7 bankruptcy, which discharged his debts in November 2003. (GX 6)

Applicant and his wife purchased a home in 2005. He obtained a fixed mortgage rate with a monthly mortgage payment of \$2,400. He has been in the process of obtaining a modification of the loan from the bank. In 2009, he was approved for a modification of his mortgage loan with a bank (prior to the bankruptcy). However, the bank sold the loan to another bank. In 2010, Applicant suffered illness, separation from his wife, and unemployment. He remained in the house. The mortgage home loan is past due in the approximate amount of \$99,000. A recent credit report reflects a \$135,000 past due balance and a total loan amount of \$255,000. (GX 6) Applicant explained that he has an upcoming meeting with the loan provider, which would determine his next action. (Tr. 17)

Applicant met with the bank on December 20, 2013. They required Applicant's wife's signature on the documents before proceeding with a modification. (Tr. 16) On February 6, 2014, Applicant again met with the mortgage holder. On January 31, 2014, he was approved for a permanent loan modification. (AX C) The Home Affordable Modification Program (HAMP) waived the past-due unpaid late charges and allows Applicant to make monthly payments of \$1,570 beginning on March 1, 2014. (AX B) He now has an approved plan, which he will implement.

¹Delays occurred due to weather issues and Applicant's ability to fax documents. There was no objection to the extension of time from Department Counsel.

Applicant and his wife have joint custody of their son and daughter, but Applicant pays child support in the amount of \$342 weekly. (Tr.33) This amount is deducted from his pay check. Applicant was unemployed from May 2010 until June 2011. During that time, he also had surgery. In 2009, Applicant's pay was reduced by ten percent. He could not pay his bills or meet all his obligations. His wife was not working. (GX 2)

In 2010, Applicant and his wife filed a chapter 13 bankruptcy (wage earner's plan) due to mounting bills from unemployment, pay cuts, and medical issues. At the time, his wife was working one day per week. He documented the debts which were included in the plan. He makes payments to the bankruptcy trustee each month in the amount of \$100. He provided a case status report to confirm that he is current on the payments in the plan. (AX A) He reported this bankruptcy to his facility security officer (FSO). (GX 7-8)

Applicant's net monthly income is approximately \$4,000. After expenses and child support obligations, his net monthly remainder is a very small sum. He is current on his monthly expenses. He has a retirement savings plan. He has no new debts. He provided documentation that in 2013, he paid a loan in full that he had from his 401(k).

Applicant was candid and forthright. He testified that he has not ignored his creditors. He used a legally acceptable means of debt resolution in the bankruptcy court in 2003 and 2010. He has steadily worked to obtain a home modification so that he could keep his home.

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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ 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.

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

Compulsive gambling is a concern as it may lead to financial crimes 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 disqualifying:

- (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 has delinquent debt in the amount of approximately \$99,000 on a past-due home mortgage loan. He filed for bankruptcy in 2003 and in 2010. Consequently, the evidence is sufficient to raise disqualifying conditions in ¶ 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; 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.

Applicant's unemployment, underemployment, medical issues, separation, and upcoming divorce have caused his financial difficulties. These were events beyond his control. His surgery and medical situation also contributed to his financial problems. He was the sole provider for the majority of his marriage. His 2003 chapter 7 bankruptcy was discharged in 2003. In 2010, Applicant and his wife filed for a chapter 13 wage earners plan. Bankruptcy is a viable means of dealing with financial issues. He provided documentation to substantiate that the payment plan is current. He did receive financial counseling as a result of the bankruptcy. Applicant has a plan in place to resolve his past due home mortgage loan. According to a recent credit report, approximately \$135,000 is past-due on the account. Applicant has tried since 2009 to obtain a loan modification. He remained in the home when he and his wife separated. He has been approved for a program that will waive unpaid late charges. His monthly mortgage amount is \$1,570. He begins the monthly payment in March. Applicant now has steady employment, but with his child support and expenses, he has hardly any net monthly remainder. AG ¶¶ 20 (b), (d) and (c) 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 43-year-old employee of defense contractor. He is married, but legally separated and will file for divorce. His unemployment, underemployment, surgery, and child support obligations have caused financial difficulties since 2003. He has supported his children and paid child support for several years. Applicant used a legally viable means of debt resolution in 2003, when he filed for chapter 7 bankruptcy. He and his wife filed for chapter 13 bankruptcy in 2010. He submitted documentation that he is current in his payment plan, and what debts are included in the plan.. He has a past due home mortgage account that is now resolved. I have no doubts about his ability to satisfy his delinquent debts at this time. Applicant submitted post-hearing information concerning his current bankruptcy status. He also submitted documentation resulting from his post-hearing meetings with the mortgage holder for his home loan. I have considered the information for mitigation purposes. He has steady income and Applicant has met his burden of proof to mitigate the financial considerations security concerns. 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.c:	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