



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



In the matter of:)	
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Applicant for Security Clearance)	ISCR Case No. 12-02018

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

01/10/2014

Decision

LYNCH, Noreen, A., Administrative Judge:

On August 5, 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 October 23, 2013. A notice of hearing was issued on November 1, 2013, scheduling the hearing for November 26, 2013. Government Exhibits (GX) 1-6 were admitted into evidence, without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-E for the record, which was admitted without objection. I kept the record open until December 20, 2013, for additional submissions. Applicant provided a packet of receipts, which was marked AX F, and entered into the record without objection. The transcript (Tr.) was received on

December 4, 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, with the exception of ¶¶ 1.c, 1.f, 1.g, and 1.k through 1.o, with explanation.

Applicant is a 39-year-old security guard of a defense contractor. He attended a technical college. He is divorced and has three children. Applicant served in the U.S. Army from 1998 until 2004, and received an honorable discharge. He has been with his current employer since April 2013. (GX 1) Before that time, he had two part-time jobs. (Tr. 21) Applicant held a security clearance in the military.

The SOR alleges Applicant has unresolved debts totaling approximately \$39,641. This includes judgments, child support obligation, collection accounts, emergency medical bills, and both federal and state tax debts.

In 2006, Applicant and his family moved to another state for better job opportunities. He experienced unemployment for a period of time and had underemployment as well. His employer also encountered financial problems and Applicant did not receive pay for work that he had completed. (GX 2) He had difficulty paying his rent, utility bills, and daily expenses, and he incurred delinquent debt. (SOR 1.a) He contacted his creditors, but he could not make payments on the accounts. At this time, Applicant and his wife separated. Applicant lost the income of his spouse. Applicant was responsible for all marital debts, although his wife promised that she would help pay the judgment for the unpaid rent and utility bills. (Tr. 82) Applicant's wife also received the family car, which was repossessed when she failed to make payments. (SOR 1.h)

Applicant and his wife divorced in 2012. Applicant's child support obligation caused him to incur other debts. He explained that \$1,060 a month was deducted from his paycheck for child support. Since that was the highest amount that could be deducted from his check, he still had arrears, which amounted to \$11,000. Through his payments, he now has a balance of approximately \$8,000. (AX C) Applicant has made an inquiry with the child support agency for a reduction based on his income.

Applicant contacted a bankruptcy attorney. Following the hearing, he filed for Chapter 7 protection on December 11, 2013. (AX F) The debts listed in the SOR, other than the tax debts and those he already paid, are included in the bankruptcy petition.

Applicant's debt to the Internal Revenue Service (IRS) is based on incorrect exemptions that he listed for a second job. (Tr. 14) In 2009, he obtained the services of a tax preparer. The IRS sent Applicant a letter that his tax return for 2009 had not been received. In 2011, Applicant learned that there was an error in the 2009 tax return. The November 2011 letter advised Applicant that he owed \$3,000 rather than the \$2,000 he originally believed was owed. He had a professional company file his tax returns

properly. He has a payment plan with the IRS. Applicant pays \$200 a month. Applicant is current with his payment plan. (AX F) The amounts are taken directly from his checking account.

Applicant has a payment plan for the 2009 state tax debt (\$577.25). He pays \$48 a month to the state. SOR 1.k. (AX B)

During the past year, Applicant paid the debt alleged in SOR 1.l (\$925) This related to automobile insurance for his motor vehicle in the amount of \$3,000. Applicant's mother had been paying his premiums, but stopped suddenly and did not advise him. He originally made a down payment of \$600. He paid \$924 to settle the account. (AX A)

Applicant's net monthly income is \$2,250. After expenses and bill payments, he has a net remainder of approximately \$500. He is current on his monthly expenses. He has no new debts.

Applicant was candid and forthright. He has not ignored his creditors. Initially, he did not want to file for bankruptcy. He has payment plans for his state and federal taxes. He settled other debts. He has now, on advice of counsel, filed for Chapter 7 bankruptcy. He is paying his child support. Applicant fully disclosed the situation on his security clearance application, and during his investigative interview.

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. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ 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

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

⁶ *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 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 acquired delinquent debts as a result of unemployment, separation, and divorce. He acknowledged his delinquent debt. His credit reports confirm the debts. In addition, he admits his federal and state tax issues. 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 delinquent debts are the result of unemployment, separation and divorce. He and his wife separated and he lost his wife's income. He was responsible for all marital debt since obtaining his current job in April 2013, and he has paid what he could on his bills. He prioritized the debts and did not ignore his creditors. He was given bad advice about this 2009 taxes and as a result in 2012, he learned that he owed more tax. He did not ignore the issue. He had his tax returns properly prepared. He entered into a payment plan as soon as it was feasible. Applicant is current with both the federal and state payment plans. In addition, his divorce created a child support obligation. He fully explained the situation with child support. He did not overlook his duties to his children. He has paid some accounts in full. Applicant obtained financial counseling through the bankruptcy process. He provided sufficient mitigation to show his good-faith efforts and to prove he has taken sufficient steps to get his financial situation under control. Mitigating conditions AG ¶ 20(a), (b), (c), and (d) 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 39-year-old employee of a defense contractor. He served in the military and was honorably discharged. Applicant's marriage ended in divorce, which contributed to his financial difficulties. He has never ignored his creditors. He is supporting his three children through child support. He has been unemployed or underemployed, which exacerbated his problems. He received bad advice about his tax filing with regard to the number of exemptions that he could file. He addressed the issue when he learned about the problem. He is current on his state and federal tax repayment plans. He has addressed his other delinquent accounts. He has paid other non-SOR debts. On advice of counsel, he has recently filed for bankruptcy. This is a legal means to resolve debts. He provided sufficient documentation to mitigate the financial considerations security concerns. I have no doubts about his reliability or judgment. Applicant was candid and forthright at the hearing. He was also open and honest about his finances on his security clearance application and interview. Applicant has met his burden of proof. 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.o: 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's eligibility for a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge

