



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



In the matter of:)
)
) ISCR Case No. 12-03565
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

03/20/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On November 26, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under Executive Order (EO) 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) implemented on September 1, 2006.

On December 24, 2013, Applicant answered the SOR and requested a hearing. The case was assigned to me on January 28, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 12, 2014, and the hearing was convened as scheduled on February 18, 2014. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 6 that were admitted into evidence

without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted into evidence without objection. The record was left open until February 25, 2014, to provide Applicant an opportunity to submit additional matters. He timely submitted additional documents that were marked as AE C and D and admitted into evidence without objection. Department Counsel's forwarding email reflecting that he had no objection to Applicant's post-hearing submission is part of AE C. DOHA received the hearing transcript (Tr.) on February 27, 2014.

Procedural Issue

At the hearing, Applicant affirmatively waived the 15-day notice requirement in Paragraph E3.1.8 of the Directive.¹ Department Counsel's email dated January 13, 2014, that forwarded to Applicant a prehearing guidance memorandum and the current revision of the Directive was marked as Hearing Exhibit (HE) 1.

Findings of Fact

Applicant is a 44-year-old field engineer working for a defense contractor. He has held that position since June 2011. He finished his high school studies in 1988 and obtained a general educational development (GED) certificate in 2010. He served in the U.S. Navy from October 1988 until his retirement as a petty officer first class (E-6) in March 2011. He was unemployed for about three weeks following his retirement. He married in June 1991, separated in February 2011, and divorced in April 2012. He has two children, a daughter who is 17 years old and a son who is 22 years old. He held a security clearance without incident for about 25 years.²

The SOR alleged that Applicant had four delinquent debts totaling about \$28,105. In his answer, Applicant admitted each debt. His admissions are incorporated as findings of fact.³

Applicant attributed the delinquent debts to marital problems. During his marriage, his wife handled their finances and paid all the bills. Throughout his naval career, he was assigned to a number of ships, deployed frequently, and focused on his job. He testified, "I made it, she spent it, but I just didn't know the extent that she was spending." Towards the end of 2011, he became aware of unpaid bills. He indicated the unpaid bills were a factor in the breakup of his marriage.⁴

Upon retiring from the Navy, Applicant began working in his current job. In December 2011, he submitted a security clearance application. When he was

¹ Tr. at 11-16.

² Tr. at 6-7, 32-38, 46, 52; GE1, 2. While Applicant has been employed in the same job following his retirement, he has worked for different contractors while serving in that position.

³ Applicant's Answer to the SOR; GE 2-6.

⁴ Tr. at 29-30, 32-37; GE 2.

interviewed by the Office of Personnel Management investigator, he was shocked to learn of all of the unpaid bills. He first attempted to file bankruptcy in another state, but was dissatisfied from the legal services he received there. He then moved to another state and had to wait 180 days to establish residency before filing bankruptcy in the new state. A review of the credit reports supports a determination that the four alleged credit card debts became delinquent during his marriage. He claimed that he never possessed or used those credit cards.⁵

At the time of the hearing, Applicant and his ex-wife do not have a friendly relationship and generally do not communicate with one another. The divorce degree provided that his ex-wife received practically all of their personal property, including his truck. He pays her \$1,000 per month in alimony, which included \$545 of his retirement pay. He also pays \$932 per month to his ex-wife for his daughter's child support. His son has graduated from college and is employed. He indicated his ex-wife's parents are wealthy, and they have since purchased a new home for her. He also noted that his ex-wife filed for bankruptcy following their divorce.⁶

In about 1994, Applicant and his ex-wife purchased a home for about \$120,000. At some point, a home equity loan was obtained on the property, but he did not remember the details. After he and his ex-wife separated, she remained in the home, but stopped making the mortgage payments. They eventually sold the home for a profit. He believed that they sold it for \$158,000, but was not sure. As part of that sale, he received \$5,500 of the proceeds in about April 2013.⁷

Applicant filed Chapter 7 bankruptcy on February 12, 2014. An attorney is representing him in that proceeding, and the attorney's fee has already been paid. Applicant obtained financial counseling before filing bankruptcy. Schedule F of the bankruptcy petition listed four unsecured, non-priority debts, totaling \$60,970. The bankruptcy petition reflected that Applicant's monthly income was \$4,087 and that his monthly expenses, including his alimony and child support payments, were \$4,041, which left him a net monthly remainder of about \$46. His attorney advised him that his bankruptcy would take about three to four months to complete.⁸

Applicant was open and forthcoming in his testimony. I found him to be a credible witness. He lives very modestly and does not have a cell phone in his name. His vehicles are paid in full, which include a 2007 motorcycle and a 1972 truck with about 600,000 miles on the speedometer. He has a debit card, but no credit cards. He has not

⁵ Tr. at 30-31, 63-64, 71; GE 2.

⁶ Tr. at 46-51, 53-54, 62-63; AE A.

⁷ Tr. at 41-46, 50; GE 4-6. No real estate debts are listed in his bankruptcy petition. See AE D.

⁸ Tr. at 52-54, 56-57; GE 2-6; AE A, B, D. Only two of the alleged debts (SOR ¶¶ 1.a and 1.b) are reflected in Schedule F. The Verification of Creditor Matrix, however, included the creditors of the debts in SOR ¶¶ 1.c and 1.d. In GE 2, Applicant stated that his ex-wife may have paid some of the delinquent credit cards, but he did not identify those debts.

incurred any new debts since separating from his ex-wife. At the time of the hearing, he had about \$500 in a savings account and \$2,000 in a checking account.⁹

Applicant's military awards include two Navy and Marine Corps Commendation Medals, three Navy and Marine Corps Achievement Medals, four Good Conduct Medals, two Global War on Terrorism Service Medals, and ten Sea Service Deployment Ribbons. An officer-in-charge of a special operations unit indicated that Applicant's performance in his current job has been exceptional. In that position, he provides support to training facilities for special operations forces. Applicant has received a spot award for his accomplishments.¹⁰

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 that 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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

⁹ Tr. at 55-71; GE 2; AE A.

¹⁰ Tr. at 24-28; AE A.

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 about 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 Executive Order 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 as follows:

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 that he was unable to satisfy over a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 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;

(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.

Throughout his naval career, Applicant relied on his ex-wife to manage their finances. During much of the period, he was deployed on ships. For almost 22 years, she managed their finances without any problems. Given her longstanding track record of handling the family's financial matters in a responsible manner, he had a reasonable basis for putting his trust in her. Just prior to his retirement from the Navy in 2011, he learned of the delinquent credit card bills. He had never used those credit cards and was blindsided by those delinquent debts. These debts put a strain on their relationship.

Applicant and his ex-wife separated shortly after he learned of the delinquent debts. They divorced in April 2012. Their separation and divorce were conditions beyond his control that contributed to his financial problems. Since their divorce, a large percentage of Applicant's disposable income goes toward paying alimony and child support. Although his net monthly remainder is less than \$50, he has been living within his means, does not rely on credit, and has not accumulated any new delinquent debt. In February 2014, he filed bankruptcy to eliminate the delinquent debts. He has acted responsibly under the circumstances. His delinquent debts will most likely be resolved in the bankruptcy proceeding. With his divorce, his financial problems are unlikely to recur. His delinquent debts do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(d) and 20(e) do not apply, 20(a) and 20(c) partially apply, and 20(b) fully applies.

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 relevant 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 honorably served over 22 years in the Navy. He deployed frequently in service of his country and received many military awards. He has performed exceptionally in his current job. He has held a security clearance without incident for many years. His delinquent debts were the result of his ex-wife's irresponsible behavior. He has taken reasonable steps to resolve his delinquent debts. With his divorce, his delinquent debts are unlikely to recur.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the financial considerations security concerns.

Formal Findings

Formal findings 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.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 eligibility for a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge