



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



In the matter of:

)
)
)
)
)
)
)
)

ISCR Case No. 14-02082

Applicant for Security Clearance

Appearances

For Government: John B. Glendon, Esq. Department Counsel
For Applicant: Steven R. Freeman, Esq.

01/19/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations) The SOR was dated July 2, 2014. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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.¹ The case was assigned to me on April 11, 2016. A notice of hearing, dated October 4, 2016, was issued scheduling the hearing for November 22,

¹Applicant through his counsel submitted a supplemental answer, dated June 11, 2015.

2016.² Government Exhibits (GX 1-4) were admitted into the record. Applicant submitted Applicant Exhibits (AX A-D). He testified, but did not present witnesses. The transcript was received on November 30, 2016. 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) and provided detailed explanations for each allegation.

Applicant is a 67-year-old computer forensic examiner for a defense contractor. He served as a state trooper from 1972 to 1999, retiring at that time. He is divorced.³ (AX E) Applicant has worked for his current employer since June 2005. He was previously granted a security clearance. He completed a security clearance application in 2013. (GX 1)

Financial Considerations

The SOR alleges seven delinquent debts, including collection accounts and charged-off accounts, which total approximately \$219,800. (GX 4)

After leaving the state police in 1999, Applicant sought employment in the private sector. He worked for a few years (self-employed), and then worked as a federal contractor until he began employment with his current employer. Applicant's debts and financial issues were exacerbated by his second wife's embezzlement of money from her employer, his ensuing separation and divorce, and his second ex-wife's bankruptcy, which left him responsible for all the marital debt.

Applicant married in 1999, but he and his wife separated in 2011. It was a long and bitter battle, and the marriage dissolved in 2013. (Tr. 24) In 2007, Applicant's wife attempted suicide. She was taken to the hospital and survived. Applicant learned that her distress stemmed from the fact that she had stolen a great deal of money from her employer. His wife was a bookkeeper and over a period of four to five years she had stolen about \$250,000 from her employer.⁴ (SOR 1.e) Applicant had no knowledge of her actions.

As to SOR 1.a, a past-due account in the amount of \$13,916 for a first mortgage on the marital home, Applicant paid on the mortgage, but the home went to foreclosure

²The case was converted from a FORM to a hearing, The hearing was postponed several times (June-August) due to Applicant's hospitalization and other issues.

³Applicant was willing to help his wife and stay married, but he learned of two infidelities and made a decision to separate and divorce.

⁴Applicant agreed to have a lien put on his home and he took \$100,000 from his 401(k) for the other members of the company so that there would be no criminal charges filed against his wife.

in 2014.⁵ The house was sold in 2014. Applicant presented an auditor's report that establishes the balance on that mortgage is zero. It had been inaccurately reported on the credit reports, but has been updated to reflect the zero balance. (GX 4)

As to SOR 1.b, a second mortgage on Applicant's marital home in the amount of \$88,279 for a charged-off account, this was the result of a home equity line of credit, which was opened in 2003 or 2004. Applicant's wife had credit card debts and wanted to pay them off. Thus, Applicant agreed to the second mortgage. (Tr. 35) When he married, Applicant had no credit cards. Applicant has not heard anything in three years about the second mortgage. He wanted to keep his house, but without his wife's income, he could not manage the payments. He did not want to file for bankruptcy as his wife did, so he is now working with a company to dispute the debt. He testified that he would pay if the dispute is not successful. (Tr. 41)

As to SOR 1.c, a charged-off account in the amount of \$9,981, this was the result of a credit card. More than two years ago, Applicant agreed to have automatic monthly payments of \$275 sent to the company. (AX D) He provided documentation that he has made those payments and is current with them. (AX C) The current balance is \$1,731.(GX 4)

As to SOR 1.d, a collection account in the amount of \$3,633, Applicant's first wife opened the account and bought items on her credit card. However, Applicant was a co-signor on the account. This was many years ago. He called the creditor and it showed that he had not made any purchases, but his first wife had. Applicant has not paid the account. He is disputing it through the credit repair company. The latest credit report shows a zero balance. However, Applicant will pay the bill if the dispute is not successfully resolved. (Tr. 51)

As to SOR 1.e, a \$100,000 past-due loan, which was the result of Applicant's former wife's embezzlement of \$250,000 from her employer. Applicant had no knowledge of the illegal activity, but he agreed to "make the employer whole."⁶ After taking money from his 401(k) to have the company drop any criminal charges against his wife, he learned of her infidelity. (Tr. 27) Applicant finally settled in the additional amount of \$10,000 and was provided a release from the employer as a final settlement. (AX A) The settlement check was written in May 2015.

As to SOR 1.f, a past-due account in the amount of \$3,300, Applicant has resolved this debt, and the Government stipulated that it has been paid. (Tr.52)

As to SOR 1.g, a charged-off account in the amount of \$891, Applicant satisfied the debt and provided proof of payment.

⁵Applicant had been advised to stop making payments on the home and the employer's lien on the home by his divorce attorney and his bankruptcy attorney.

⁶He agreed to take \$100,000 from his 401(k), and pay the employer \$1,600 a month for almost three years beginning in 2007. When he learned that his wife was being unfaithful, he stopped the payments. (Tr. 29)

Applicant disclosed his financial issues to his employer. He listed his debts and provided detailed explanations in his security clearance application. He was open and candid at the hearing. Applicant was not aware that his wife had a gambling problem and he never suspected that she was taking money from her employer because he did not see any excessive spending on her part. (Tr. 60)

Applicant's annual salary is about \$140,000. His retirement income is about \$50,000. He has a savings account. He has a budget that he uses each month and is current with his daily bills. He has a net monthly remainder. He has no car payment. He has always timely filed his federal and state taxes. (AX B) He received financial counseling and enrolled with a credit repair company, which is disputing several items. Applicant has no delinquent debts at this time.

Applicant submitted a letter of reference which attest to his character and reliability. The letter was from a retired Air Force officer, who has been preparing Applicant's taxes. He knew about the allegations on the SOR, and stated that Applicant has been aggressively addressing the financial problems. He recommends Applicant for a clearance. (AX B)

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. . . .⁷ The burden of proof is something less than a preponderance of evidence.⁸ The ultimate burden of persuasion is on the applicant.⁹

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.”¹⁰ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹² 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

⁷ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁰ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

¹¹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹² *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.

The Government produced sufficient evidence to show that Applicant accrued delinquent debts. Consequently, the evidence is sufficient to raise disqualifying conditions AG ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate the security concerns:

(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.

After 28 years, Applicant retired from the state police. He has held a security clearance for a number of years. He married in 1999 and learned in 2007 that his wife had embezzled about \$250,000 from her employer. He took on the debt as his own. He even borrowed \$100,000 from his 401(k) to pay her debt, so that the criminal charges would not be filed against his wife. He also made monthly payments until he learned of her infidelity. Applicant has a bitter and long separation and divorce with legal fees. He has satisfied the debt to his wife's employer and was given a release of debt after paying another \$10,000. He was facing an exceptional circumstance which affected his primary and secondary mortgage.

When his wife left the marital home, he was saddled with paying the entire mortgage. He was going to sell the home, but he was advised by a lawyer to stop making payments. He took the legal advice. He did not file for bankruptcy, but attempted to contact all creditors and resolve the debts. His wife filed for bankruptcy and he was left with more debt. Each time he learned about another financial issue he addressed it as best as he could. He paid debts and he obtained services of a credit repair company. He has disputed some debts, which is his right. He experienced extraordinary circumstances that caused him financial difficulty. He took care of basic expenses. He did not ignore his creditors. He obtained the services of lawyers and a credit repair company. He obtained financial counseling. He paid some smaller debts. He was credible and candid at the hearing. He has shown a commitment to resolving his debts. Under professional advisement, he stopped certain payments. He is acting in a responsible manner. AG ¶ 20 (a) (b), (c), (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 67 years old and served in the state police for 28 years. He disclosed his debts in his 2013 application, and provided explanations. He has been a law-abiding citizen. He always timely filed his tax returns. Before the 2007 events, he had no financial problems; nor did he live beyond his means. He never ignored creditors. He took steps to contact creditors and make payment plans or settle. He has prioritized his debts. He takes responsibility for what he owes, but he did dispute two debts. He is willing to resolve them if the disputes are not successful. He paid some smaller SOR debts, as well as some non-SOR debts. He was credible and candid in his assurances that he has been addressing his delinquent debts. He lost his house to foreclosure as a result of the unexpected illegal behavior of his wife. He followed professional advice that was given to him by two lawyers. He provided documentation of his payments and other evidence of payment arrangements.

Applicant established that he has taken sufficient actions to reasonably and responsibly within his finances to resolve delinquent debts. Applicant has shown that he can responsibly manage his financial obligations. He was organized at the hearing. He was credible in retelling a rather bizarre story. He followed professional legal advice. He did not file for bankruptcy to avoid paying debts. He is making his payments, and provided documentation for all the payments that he has made to creditors over the past years. His current credit report reflects that he pays his bills. Overall, the record evidence leaves me without questions and doubts as to his judgment, trustworthiness, reliability, and eligibility for as security clearance. I conclude that Applicant has

presented sufficient evidence of mitigation of his financial considerations security concern.

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.g: 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. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge