



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



In the matter of:)
)
) ISCR Case No. 14-05288
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

04/21/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 13, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 by the DOD on September 1, 2006.

Applicant responded to the SOR on April 28, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on February 23, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on April 11, 2016. He responded with documents that I have marked collectively as Applicant's Exhibit (AE) A. The case was assigned to me on December 12, 2016. The Government exhibits included in the FORM and AE A are admitted in evidence without objection.

Findings of Fact

Applicant is a 56-year-old employee of a defense contractor. He has worked for his current employer since 2009. He served on active duty in the U.S. military from 1980 until he retired with an honorable discharge in 2007. He seeks to retain a security clearance, which he has held since he served in the military. He is a high school graduate with some college credits. He married in 1980 and divorced in 1993. He married again in 1994. He has five children over the age of 18.¹

Applicant had financial problems in the late 1990s and early 2000s. His wife lost her job, and they both overused credit. He filed a Chapter 7 bankruptcy case in 2003, and his debts were discharged the same year.²

Applicant developed additional financial problems. He maintained two households for a period after he moved to another state for his current job. His wife quit her job and relied heavily on credit cards. Applicant also admitted that he should have been more proactive in monitoring their credit and expenditures.³

Applicant and his wife filed a Chapter 13 bankruptcy case in April 2013. Under Schedule D, Creditors Holding Secured Claims, the petition listed a \$311,824 mortgage loan (the house was valued at \$340,000) and about \$46,000 in additional secured claims. The petition listed \$23,616 in state and federal taxes under Schedule E, Creditors Holding Unsecured Priority Claims. Most of the taxes were from tax year 2012 and not due to be paid until April 2013, the same month the bankruptcy petition was filed. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed debts totaling \$32,652.⁴

Applicant started paying into the proposed plan in May 2013. The plan was approved in August 2013. As of April 2014, he had paid a total of \$20,148 into the plan. He stopped paying the trustee because he thought the bankruptcy was going to be dismissed. In May 2014, the trustee moved to dismiss the bankruptcy because the last payment had been received in April 2014, and Applicant was \$6,084 behind in his payments. He resumed making payments, and the trustee withdrew the motion to dismiss in October 2014, indicating the "[i]ssues have been resolved."⁵

¹ Items 2-4.

² Items 2, 9, 10.

³ Items 2-6; AE A.

⁴ Items 2-5; AE A.

⁵ Item 5; AE A.

The bankruptcy plan had a provision that stated: "If necessary, Debtors (Applicant and his wife) shall file a modified plan to provide for a 100% payout on all valid, timely filed Class Four claims." In October 2014, the trustee moved to dismiss the bankruptcy case because: "Debtors have failed to seek modification of the confirmed plan to provide for payment of 100 percent of the claims." Applicant's motion to modify the bankruptcy plan was approved by the court in March 2015. The monthly payments increased to \$3,289.⁶

Applicant established that he made all the required \$3,289 payments as of May 2016, which was when he responded to the FORM. As of that date, \$91,503 had been paid into the plan; \$79,591 had been paid out by the trustee; and the trustee had a balance on hand of \$11,911. Payments for taxes owed to the IRS and the state were completed in March 2015. Applicant was required to pay an additional \$78,877 over the following 24 months.⁷

Applicant stopped making his mortgage loan payments in 2014 when he thought the Chapter 13 bankruptcy case was going to be dismissed. He resumed payments when he learned the case would not be dismissed. The arrearages owed on the mortgage loan were added to the Chapter 13 plan. He established that he has been making his regular monthly payments. The balance on the loan was \$311,218 in February 2013. In April 2016 the balance had been reduced to \$284,129.⁸

Applicant received financial counseling as a requirement of his bankruptcy. He reported the bankruptcy to his facility security officer; listed it on his Questionnaire for National Security Positions (SF 86); and fully discussed it during his background interview. He stated that his financial situation was stable, and that he planned to continue making the \$3,289 payments until the Chapter 13 bankruptcy plan is completed.⁹

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, which 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

⁶ Item 5; AE A.

⁷ Items 2, 5; AE A.

⁸ Items 2, 5; AE A.

⁹ Items 2-5; AE A.

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.”

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 security 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 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 of 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* EO 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:

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. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's financial history is sufficient to raise AG ¶¶ 19(a) and 19(b) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed his financial problems to maintaining two households after he moved to another state for a job, his wife's job loss, and her spending habits. He also admitted that he should have been more proactive in monitoring their credit and expenditures.

Applicant and his wife filed a Chapter 13 bankruptcy case in April 2013 and almost immediately started paying into the plan. He stopped his bankruptcy and mortgage loan payments when he thought the Chapter 13 bankruptcy case was going to be dismissed. He resumed both payments when he learned the case would not be dismissed. He caught up on the bankruptcy payments, and the arrearages owed on the mortgage loan were added to the Chapter 13 plan. During the first three years of the Chapter 13 bankruptcy, he paid \$91,503 into the plan, and he reduced his mortgage loan by almost \$27,000. He stated that he will continue with the bankruptcy plan until completion. AG ¶¶ 20(a) and 20(b) are partially applicable. AG ¶¶ 20(c) and 20(d) are applicable.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in this whole-person analysis.

I considered Applicant's honorable military service. He paid \$91,503 into his Chapter 13 bankruptcy plan, and he reduced his mortgage loan by almost \$27,000. I am convinced that he will continue with the bankruptcy plan until completion. Applicant has a plan to resolve his financial problems, and he has taken significant action to implement that plan.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

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.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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge