



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



In the matter of:)
)
) ISCR Case: 14-06773
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esquire, Department Counsel
For Applicant: *Pro se*

06/14/2017

Decision

WHITE, David M., Administrative Judge:

Applicant's wife suffered serious health problems starting in 2010, and was later found to be fully and permanently disabled. He depleted savings and economized, but eventually followed professional advice and filed for Chapter 13 bankruptcy protection. Resulting security concerns were mitigated. Based upon a review of the pleadings and exhibits, national security eligibility is granted.

Statement of Case

On April 2, 2014, Applicant submitted a security clearance application (SF-86). On December 31, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on January 22, 2016. He denied all of the SOR allegations concerning his bankruptcy filings and delinquent debts, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On May 25, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing ten Items, was mailed to Applicant on May 26, 2016, and received by him on June 7, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant responded to the FORM on June 20, 2016. He did not object to Items 1 through 3 or Items 7 through 10, although he provided a minor correction to one statement reported in Item 3. Applicant "took exception" to Items 4 through 6 on the basis that they were not relevant to the allegations in the SOR or his answer thereto. Items 4 and 6 pertain to Applicant's Chapter 7 bankruptcy discharge in 1996, which was not alleged as an issue supporting security concerns in the SOR. That evidence will not be considered with respect to establishment of any disqualifying conditions, but is admitted for the limited purpose of evaluating the applicability of mitigating conditions and the whole-person analysis. Item 5 contains only cumulative information concerning Applicant's Chapter 13 bankruptcy petition, filed in January 2013, and some completely irrelevant information concerning a minor parking citation that was dismissed in May 2013. Item 5 is not admitted and will not be considered. Applicant also submitted additional information in his FORM response, to which Department Counsel had no objection. DOHA assigned the case to me on March 6, 2017. Items 1 through 4 and 6 through 10 are admitted into evidence. Applicant's response to the FORM is marked as exhibit (AE) A and is also admitted.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Findings of Fact

Applicant is 56 years old. He is married, with two adult children. He earned master's degrees in aerospace engineering and business administration, and has worked for a defense contractor since February 2009. He has no prior Federal employment or military service, but has held security clearances without incident for

more than 35 years while holding various positions in the defense industry. (Item 2; Item 3; AE A.)

Applicant and his wife encountered simultaneous employment difficulties in the mid-1990s that were beyond their control, which led them to file for Chapter 7 bankruptcy relief. Thereafter, their financial situation stabilized and substantially improved. They were both gainfully employed and comfortably solvent, with a combined six-figure family income through the late-2000s. These circumstances had no adverse effect on Applicant's security clearance eligibility or his performance of security-related obligations. (Item 1; Item 4; Item 6; AE A.)

In 2010, Applicant's wife began suffering a number of severe physical and mental health problems, making it difficult for her to continue running her professional consulting business. She underwent a number of medical evaluations and treatments over the next three years, incurring tens of thousands of dollars in medical bills that were not covered by the family's substantial health insurance. Her illnesses and medical appointments also caused Applicant to cut back on his work hours to assist her. As a result, the couple's 2012 combined income was reduced by more than \$100,000 from their 2009 combined income. In April 2015, an administrative law judge from the Social Security Administration found that Applicant's wife had been fully and permanently disabled from December 2010 due to numerous physical and mental health impairments. (Item 1; AE A.)

From 2010 through 2012, Applicant's family was able to remain current on their debt obligations, while absorbing the loss of income and increased medical expenses, because they had lived frugally and maintained significant savings in previous years. They drew down these savings while hoping that medical solutions could be found to resolve Applicant's wife's debilitating problems. By late 2012, Applicant realized that such solutions remained elusive, and that the family's resources were being depleted. He sought financial and legal counseling, and was advised that filing for Chapter 13 bankruptcy relief offered the best option for resolution of the financial hardships imposed by these issues. He chose to accept this advice and filed for bankruptcy before any of his debts became delinquent. (Item 1; Item 2; Item 3; Item 9; Item 10; AE A.)

Applicant's bankruptcy attorney initially filed Chapter 13 proceedings in December 2012 but, due to a calendaring error, missed a deadline for filing some supporting documentation in early January 2013. This error caused the bankruptcy court to dismiss the initial case. On January 19, 2013, the attorney refiled Applicant's Chapter 13 petition with all supporting documentation. Although the bankruptcy court issued several subsequent orders dismissing the Chapter 13 proceeding due to the complex nature of the case, Applicant's attorney was able to have it reinstated in each instance after demonstrating justification for the issues involved. Applicant's Chapter 13 plan, which calls for payment of more than \$65,000 to his creditors, was finally approved on November 12, 2014. Applicant made every payment pursuant to that plan on time or early. All of Applicant's debts, including those cited in SOR ¶¶ 1.c through

1.g, are included in the plan and being paid, as required, under court supervision. Applicant and his bankruptcy attorney provided extensive documentation of these facts. (Item 1. See *also* Exhibits J and L to attorney's declaration.)

Applicant's income is sufficient to maintain the ongoing bankruptcy payments and pay his current living expenses. Upon completion of his five-year bankruptcy plan in January 2018, his only remaining debts will be the first mortgage loan on his home and some student loan debts he co-signed for his children's college education. This will result in more disposable income for the family than they currently experience while making the bankruptcy payments. (Item 1; AE A.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:¹

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

Applicant used a combination of savings and economization to meet the financial hardships resulting from his wife's serious medical issues that started in 2010, but was unable to continue doing so after 2012. Due to this inability to satisfy some debts, he sought Chapter 13 bankruptcy protection in early 2013. These facts establish prima

¹ Department Counsel argued, on page 2 of the FORM, that the record established three disqualifying conditions under each of Guidelines G (Alcohol Consumption) and J (Criminal Conduct). This was an evident scrivener's error, since neither the SOR nor the record evidence raise any issues under either of those guidelines. This statement has no evidentiary value, and is disregarded as a harmless error.

facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

(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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's wife was gainfully employed and contributing to their family income and activities before her unexpected and complex combination of physical and mental health issues arose in 2010. After drawing down savings and economizing for several years while hoping to find a cure for her ailments, Applicant consulted with financial and legal experts to determine the best course of action. In December 2012, he accepted and followed their advice to file a Chapter 13 bankruptcy proceeding and pay fair proportions of his available income to various creditors under the supervision of a court-appointed trustee. Applicant has followed all of the conditions of his original and modified bankruptcy plan, and has both the means and intention to continue making timely payments through plan completion in January 2018. At that point, all of his debts, except the first mortgage loan on his home and some student loans he co-signed for his children will be fully resolved. He has the means to remain solvent and continue repaying those debts.

Applicant acted responsibly under unforeseen difficult circumstances that were completely beyond his control, and there are clear indications that his financial issues are under control. He followed the recommendations of professional counselors, and is adhering to a good-faith, court-approved bankruptcy plan to repay and resolve his debts. The record establishes clear mitigation of financial security concerns under the provisions of AG ¶¶ 20(a) through 20(d).

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(d):

(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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who took reasonable and effective action to resolve the financial issues created by his wife's debilitating health problems. He followed professional advice, and has consistently followed his five-year Chapter 13 bankruptcy plan to resolve his debts for four and a half years. The likelihood that financial problems will recur is minimal; and the potential for pressure, coercion, or duress is eliminated by court-supervised resolution of Applicant's formerly outstanding debts. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He fully met his burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a through 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 national security eligibility and a security clearance. National security eligibility is granted.

DAVID M. WHITE
Administrative Judge