



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



In the matter of:)
)
) ISCR Case No. 15-00699
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

08/25/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for a security clearance is granted.

Statement of the Case

On December 12, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on December 30, 2015, and requested a hearing before an administrative judge. The case was assigned to me on June 6, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 22, 2016. I convened the hearing as scheduled on July 18, 2016. The Government offered

exhibits (GE) 1 through 5, which were admitted into evidence without objection.¹ Applicant testified and offered exhibits (AE) A through C, which were admitted into evidence without objection. The record was held open until August 1, 2016, to permit Applicant time to submit additional documents, which he did, and they were marked as AE D through G, and admitted without objection.² DOHA received the hearing transcript (Tr.) on July 26, 2016.

Findings of Fact

Applicant admitted both allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 61 years old. He completed two years of a technical school in 1983. From 1975 through 2000, Applicant served in the Army and the National Guard. He was recalled to active duty in the Army in 1988 and served in the Army Special Forces. He was involved in classified combat operations for which he received the Defense Meritorious Medal as a staff sergeant. When he retired honorably from the Army as an E-7, he was authorized to wear the Meritorious Service Medal (three awards), Army Commendation Medal (three awards), Army Achievement Medal (eight awards), and the Joint Meritorious Medal (two awards), in addition to numerous campaign ribbons, service devices, and qualifications. Applicant has held a security clearance since approximately 1978.³

Applicant has been married four times. He has a grown child from his first marriage. He has four children with his current wife, whom he married in 1990. Two of his children, ages 25 and 23, have severe autism. He also has twin daughters who are 22 years old. They both live with him, and one of them has a child. That daughter does not receive child support and relies totally on Applicant for financial support. The other daughter works, and contributes to the household expenses, but has mental health issues and is unable to drive. She relies on either Applicant or her sister to drive her to and from work.⁴

In 2008, Applicant and his wife earned a combined income of \$169,700. In 2009, Applicant's wife lost her job as a registered nurse. Their income dropped to \$76,000. Applicant self-reported the income loss to his security manager, advising him that he was financially stable at the time, but was unsure of the future. Due to his two childrens' severe disability, they could not be left home alone with a regular babysitter. Applicant believed at the time his wife would go back to work, but she insisted on staying home to care for the children. Applicant's wife used their credit cards irresponsibly. She withdrew

¹ Department Counsel also submitted Hearing Exhibit (HE) I, which is his discovery letter that was sent to Applicant.

² HE II is Department Counsel's memorandum indicating he had no objections to the additional evidence.

³ Tr. 22-25.

⁴ Tr. 25-29, 45, 61.

money from her retirement account and incurred tax penalties. They used that money to care for their family. Applicant testified he did the best he could to pay the bills and provide for his family and children's special needs. In 2011, Applicant's autistic son could no longer be cared for at home and went into the county's adult supervised care unit. In 2012, his autistic daughter did the same. Applicant's wife became distraught and experienced mental health issues. He knew she needed help and attempted to obtain it for her. She has been under a doctor's care since in 2014. She is unable to work or drive and is totally dependent on Applicant for her needs.⁵

Applicant contacted his creditors and was able to pay five debts between 2009 and 2010, but he was unable to pay the creditor for the two debts alleged in SOR ¶¶ 1.a (\$5,603) and 1.b (\$20,395). Credit reports from June 2014, December 2014, and November 2015, substantiate the debts.⁶ In 2011, he contacted the creditor and explained he could not afford the minimum payment on the accounts and requested an alternative payment plan. It offered him a monthly installment payment that he could not afford. He contacted a debt relief company that indicated it could help him, but it needed a written statement from the creditor. He attempted to get one from the creditor, but the debts had been charged off, and it would not provide one. Because his payments were delinquent, the interest rate on the debts rose to 24.49%. He continued to try and negotiate an affordable payment plan with the creditor in 2011, but was unsuccessful. He advised the creditor that he was not ignoring his two delinquent accounts, but was currently unable to pay them at the rate the creditor insisted upon.⁷

Applicant recently completed paying his military credit account, so he now has additional resources and has begun making payments to the SOR creditor. His intention is to make monthly payments of \$500 until he reduces the balance to an amount that he can offer a lump sum settlement.⁸ He chose to not file bankruptcy because he believes paying his debts is the better choice. Applicant has a detailed written budget.⁹ He testified that his wife has not had any access to credit cards or money since 2011. Due to her mental state she is totally dependent on him. He stated that he never ignored his debts, but things happened in his life that he could not control, and they negatively affected his finances.¹⁰

Applicant provided a letter of recommendation from a major general of the Army who described Applicant as detail-minded, highly-qualified, and an exceptionally reliable person. The general stated that if he had his own personal security detachment he

⁵ Tr. 29-59, 64-66; Answer to SOR; AE A, D.

⁶ GE 3, 4, 5.

⁷ Tr. 38-40, 47; 50, 53 Answer to SOR with attachment of IRS Forms 1040 for 2008 and 2009.

⁸ AE A, G.

⁹ AE E, F.

¹⁰ Tr. 50-64.

would want Applicant to lead it. He values his judgment and routinely relied upon his input. He considered Applicant an outstanding professional.¹¹

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 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, these guidelines are applied 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel and 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.

¹¹ Answer to SOR, attachment.

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.” 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹²

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant has two delinquent debts from 2011 that he has been unable to pay. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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

¹² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 experienced financial difficulties when his income was drastically reduced after his wife stopped working. Because he is still addressing the two delinquent debts alleged in the SOR, AG ¶ 20(a) does not apply.

For the application of AG ¶ 20(b), there must be conditions that were beyond Applicant's control which resulted in the financial hardship, and he must have acted responsibly under the circumstances. Applicant attributed his financial problems to several factors: his income was significantly reduced when his wife lost her job; she has been unable to work; his wife spent money irresponsibly; he had two special needs children for whom he provided support, in addition to his daughter and grandchild, both of whom he currently supports. These are conditions that were beyond his control. Applicant paid all of his debts except the two alleged in the SOR. He has not ignored these debts; rather he contacted the creditor when he was unable to make payments and attempted to negotiate an affordable payment plan. He also contacted a credit relief company, but he was unable to establish a plan because the credit card creditor would not provide him with a written statement because the debts were charged off. Applicant recently began making \$500 payments to the creditor to resolve both of the debts. I find he has acted responsibly, and AG ¶ 20(b) applies.

Applicant's two special needs children are now in an adult care unit. Applicant has a detailed budget and is making payments to the creditor. His wife has no access to their finances. There are clear indications that his financial problems are being resolved and under control. He has made good-faith efforts to repay the overdue creditors or otherwise resolve his delinquent debts. AG ¶¶ 20(c) and 20(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 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 my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 61 years old. He has had financial problems, which he has not ignored, but due to circumstances beyond his control, they became unmanageable. He has paid all but one creditor with whom he has two accounts. He recently began making payments to resolve these debts. Despite attempts to make alternative arrangements with the creditor at the time the accounts became delinquent, he was unsuccessful. He has a budget and a plan that he has implemented to resolve these remaining debts. Applicant has a long history of commendable service to our country. He has acted responsibly to resolve his financial problems. I do not have questions about his judgment, reliability, and trustworthiness. 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 mitigated the financial considerations guideline 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 and 1.b:	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. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge