



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



In the matter of:

ISCR Case No. 15-01210

Applicant for Security Clearance

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel

For Applicant: *Pro se*

10/11/2016

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 24, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR with an undated response, and requested a hearing before an administrative judge. The case was assigned to me on March 2, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 4, 2016, and the hearing was convened as scheduled on March 31, 2016. The

Government offered exhibits (GE) 1 through 8, which were admitted into evidence without objection. Applicant testified and offered exhibits (AE) A through D into evidence, which were admitted without objection. The record was held open until April 29, 2016, for Applicant to submit additional information. Applicant did not submit any additional evidence. DOHA received the hearing transcript (Tr.) on April 12, 2016.

Findings of Fact

Applicant denied all the SOR allegations with explanations. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 52-year-old employee of a defense contractor. He has worked for his current employer for 12 years. He has a master's degree. He is divorced and has three children, two for whom he provides child support.¹

The SOR alleges Applicant is responsible for eight delinquent debts totaling \$30,705, a 2012 dismissed Chapter 13 bankruptcy, and a 2015 Chapter 13 bankruptcy. The debts are supported by credit reports from June 2014 and September 2015. The bankruptcy allegations are supported by court documents.²

Applicant attributes his financial distress on a contentious divorce that began in 2009 and took over six years to resolve. He believes the two years' worth of alimony (2009-2011) he paid his ex-wife was based upon misrepresentations she made about her finances. He claims that this also led to an increase in his child support payments. His current child support payments are approximately \$922 per month. He is up-to-date on those payments. He also stated that he expended approximately \$60,000 in legal fees and related expenses associated with his divorce. He did not provide documentation of these expenses.³

Applicant admitted incurring all the SOR debts, but denied them in his answer because they all were included in his Chapter 13 bankruptcy plan. He originally filed for Chapter 13 bankruptcy protection in March 2012. That case was dismissed in March 2014. Applicant claimed that the case was dismissed because the payment plan did not include his federal and state tax debt. He was advised by counsel to dismiss this case and refile. The refiled case would include the tax debt. The bankruptcy trustee's motion to dismiss stated that non-payment under the plan was the reason for seeking dismissal. The court granted the dismissal based upon the trustee's motion. A subsequent Chapter 13 petition was filed in January 2015. Applicant's Chapter 13 payment plan was approved in May 2015. All SOR debts are included in this plan. His monthly payments are \$975 beginning in February 2015 and lasting for 60 months. He

¹ Tr. at 5, 22, 24-25; GE 1.

² GE 2-8.

³ Tr. at 27, 29, 48; AE C-D.

did not present evidence he is making payments under the plan. He testified that his last payment was in December 2015. He admitted not making payments for January through March 2016. He stated the reason for not making the payments was because he is paying his divorce attorney's fees and his required child support payments. The record was held open until April 29, 2016, to allow Applicant to submit proof of bankruptcy plan payments. He did not submit any evidence. He received counseling as a part of the bankruptcy process.⁴

He currently has about \$1,000 in his checking account. He has no savings account, but he has a pension account containing approximately \$50,000.⁵

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

⁴ Tr. at 31-32, 36-37, 48, 52, 61, 64-65; GE 4-8; AE A-B.

⁵ Tr. at 54-55.

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 has numerous delinquent debts that remain unpaid. He filed two Chapter 13 bankruptcy petitions, one in 2012 and a second in 2015. The 2012 case was dismissed. The 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; and

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

Applicant's debts are recent, multiple, and cast doubt on his reliability, trustworthiness, and good judgment. He admitted being three months behind on his bankruptcy plan payments. AG ¶ 20(a) is not applicable.

Applicant's divorce affected his finances. He sought bankruptcy relief, but has not offered proof of his payments under the plan and admitted being three months behind on his monthly payments. He has not shown responsible action in dealing with his delinquent debts. AG ¶ 20(b) is not applicable.

Applicant received financial counseling through the bankruptcy process. He sought to handle his debts through a Chapter 13 bankruptcy plan, but failed to offer evidence that he is making payments under the plan. The evidence is insufficient to conclude that his financial problems are resolved or under control. Even if he was current on his bankruptcy plan payments, such action, while legally permissible to rid one of debts, does not constitute a good-faith effort to pay one's debts. It certainly does not alleviate the security concerns arising from Applicant's poor judgment that led to his repeated financial problems. AG ¶ 20(c) partially applies, but ¶ 20(d) does not 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 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.

I considered the circumstances by which Applicant's financial situation was affected by his divorce and related matters. However, I also considered while he established a bankruptcy payment plan under Chapter 13, he failed to provide evidence that he was making payments under the plan and admitted he was three months behind on his payments. His financial track record reflects an unstable financial history, which causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not 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: AGAINST APPLICANT

Subparagraphs: 1.a – 1.j: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge