



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03590

Appearances

For Government: Andrea Corrales, Esq., Department Counsel

For Applicant: *Pro se*

08/01/2016

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 November 11, 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 December 1, 2015, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on February 10, 2016, and reassigned to me on May 4, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 20, 2016, scheduling the hearing for June 23, 2016. The hearing was convened as scheduled. Government

Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on July 5, 2016.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor. He has worked for his current employer since 2003. He seeks to retain his security clearance. He attended trade school and college for a period without earning a degree. He is married with two minor children.¹

Applicant developed financial problems, which he attributed to the normal expenses of having a family with two children. He also admitted that he and his wife had poor spending habits. The SOR alleges a \$9,622 judgment, four delinquent debts totaling about \$15,070, and that Applicant filed a Chapter 13 bankruptcy case in October 2015. The judgment was awarded to the creditor of the \$4,358 debt alleged in SOR ¶ 1.d. Applicant admitted owing all the debts.²

Applicant and his wife filed a Chapter 13 bankruptcy case in October 2015. Under Schedule D, Creditors Holding Secured Claims, the petition listed \$122,271 in claims, which included a \$121,509 mortgage loan and \$762 owed on an auto loan. The petition listed \$3,600 owed to the IRS and \$1,600 in attorney's fees under Schedule E, Creditors Holding Unsecured Priority Claims. Applicant paid the attorney \$2,000 before the petition was filed. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed debts totaling \$44,562.³

Applicant's bankruptcy plan calls for 59 monthly payments, with payments of \$550 for months 1 to 5, followed by \$718 payments for months 6 to 28, and \$1,180 payments for months 29 to 59. The total to be paid through the plan is \$55,870, which includes 100% payments to the unsecured debts under Schedules E and F. Applicant's mortgage and auto loans are being paid outside the plan. The bankruptcy payments are being garnished from Applicant's paycheck. He submitted documentation that he has made all required payments.⁴

Applicant received financial counseling as a requirement of his bankruptcy. He and his wife are on a strict budget. He credibly testified that he will make all the required payments until his debts are paid and the bankruptcy discharged.⁵

¹ Tr. at 20-21; GE 1.

² Tr. at 16, 22; Applicant's response to SOR; GE 1-5.

³ Tr. at 16; GE 4; AE A.

⁴ Tr. at 16, 21-22; GE 4; AE A, B.

⁵ Tr. at 18-21, 25; GE 4.

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 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 had delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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 financial problems were the result of the normal expenses of having a family with two children and poor spending habits. He and his wife filed a Chapter 13 bankruptcy case in October 2015, and they have been consistently paying into the plan. His unsecured debts will be completely paid through the plan. His current finances are stable. He and his wife adhere to a strict budget. He credibly testified 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. The above mitigating conditions 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 my whole-person analysis.

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.f: 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