



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



In the matter of:

)
)
)
)
)
)
)
)

ISCR Case No. 15-05622

Applicant for Security Clearance

Appearances

For Government: Charles Hale, Esq. Department Counsel
For Applicant: *Pro se*

04/07/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated February 24, 2016. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on October 19, 2016. A notice of hearing, dated January 9, 2017, was issued, scheduling the hearing for February 23, 2017. Government Exhibits (GX) 1-4 were admitted into the record. Applicant submitted Applicant Exhibits (AX) A-G. I held the record open until March 2, 2017. Applicant submitted an additional document, which was marked as AX H, and entered into the

record without objection. He testified, but did not present witnesses. The transcript was received on March 2, 2017. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in the SOR under Guideline F (Financial Considerations), and provided detailed explanations for each allegation.

Applicant is a 39-year-old employee of a defense contractor. In 2013, he married, but he is now separated. He has no children. (Tr. 33) Applicant received his undergraduate degree in 2004. (GX 2) He has worked for his current employer since 2009. (GX 1) He has held a security clearance since 2009. He completed his most recent security clearance application in 2014. (GX 1)

Financial Considerations

The SOR alleges four delinquent debts, including three judgments, which total about \$34,000 and a collection account in the amount of \$842. (GX 3) Applicant explained that he has paid other debts that are not on the SOR. (GX 2; Tr. 17; AX E) In 2013, he settled an account. (Tr. 19) He received a form 1099-C for another account. (AX G)

As to SOR allegation 1.a, a 2011 judgment filed in the amount of \$11,958, Applicant is in a repayment plan (AX A). (Tr. 24) He makes a monthly payment of \$50. His first payment was in January of this year. However, he will renegotiate in a year to increase the payment amount. The judgement is the result of a home that Applicant and his friend purchased. In 2006, when his girlfriend left the home, he could not maintain the payments on one income. He used credit cards to pay his bills for the home and for any repairs that were required. (Tr.21) Applicant testified credibly that he did not know about this judgment until his investigative interview in 2015. (Tr. 44)

As to SOR allegation 1.b, Applicant admits the debt of \$4,927. He has been paying \$100 monthly. (AX B) He settled the debt for about \$1,100 (Tr.16) He started payments in late 2014. This is the result of a line of credit. (Tr.29)

As to the SOR allegation in 1.c, a 2011 judgment in the amount of \$17,580.00, Applicant provided a payment history showing payments since 2010. (AX C) This is a result of a short sale. Applicant stated that he had to pay \$10,000 for a service fee. (Tr. 43) (AX C) It is unclear whether Applicant understood or was taken advantage of due to English as a second language.

As to the allegation in SOR 1.d, a collection account in the amount of \$841, Applicant provided documentation that he settled the debt in 2013. (AX D)

Applicant's annual salary in 2011 was about \$40,000. (Tr. 26) In 2013, Applicant's annual salary was about \$60,000. (Tr. 32) He now earns \$75,000 a year. He has no other delinquent debt. His car is paid in full. (Tr. 35) He believes his monthly net remainder is \$1,500 a month. (Tr. 35) He has a 401(k) account that he recently started. He is current on his student loans. (Tr. 49) He uses one credit card and pays the balance each month. He has a savings and checking account. He has not sought financial counseling. Applicant lives with his parents. He stated that although he does not have a formal budget, he makes a list of his expenses each month. (Tr.50) Applicant stated that he can continue with his payment plans and that is his intention. Applicant was emphatic that he has not neglected his finances. He disclosed in detail other accounts on his security clearance application. (GX 1)

Applicant submitted a letter of reference as a post-hearing submission. The Director of the contracts department stated that Applicant has been a valuable employee for eight years. Clients have praised his knowledge and expertise. He is honest, dependable, and hard-working. Applicant is a team player. (AX H)

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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 avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect 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 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

The Government produced sufficient evidence to show that Applicant accrued delinquent debts and judgements. Applicant admitted the debts and judgments. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), 19(c).

AG ¶ 20 provides conditions that could mitigate the security concerns:

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(f) the affluence resulted from a legal source of income.

Applicant's current financial difficulties began in 2006 when his friend left the home that they were in together. He could not afford the mortgage. He used credit cards to pay for almost everything. A judgment was entered in 2011, which Applicant stated he had no knowledge of until his investigative interview. He produced evidence that he has a payment plan for his debts and resolved other non-SOR debts. One SOR debt was settled in 2013. Applicant supplemented the record with a letter of recommendation. He receives partial credit under AG ¶ 20(b) due to the circumstances beyond his control although he could have been more aggressive, I believe he acted responsibly given his understanding of the issues. He did not obtain counseling. He receives partial credit under AG 20(d) as the payment plans are in existence and he has the resources to continue the plan. The other mitigating conditions do not apply. Applicant presented sufficient evidence in this case to meet his burden. He mitigated the financial security concerns.

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is 39 years old. He now lives with his parents. He has had a clearance without incidents since 2009. He is recommended for his reliability and hard work. He bought a home with his girlfriend, and when she left, he could not afford to maintain the mortgage and other expenses. He paid other non-SOR debts. He remarried, but separated. He alone is making payments on the judgments. He was credible in that he did not know about the one judgment until the investigative interview in 2015. English is his second language and he tried hard to understand the short sale of the home and paid a \$10,000 service fee. This appears to be quite high. He has not neglected his debts.

Applicant is in a steady position and is now saving money and paying his bills. He has no car payment. He is not living above his means. He is living with his parents. He was credible with his statements that he will continue with his payment plans. One debt is resolved on the SOR. Overall, the record evidence leaves me without questions or doubts as to his judgment, trustworthiness, reliability, and eligibility for his security clearance. I conclude that Applicant presented sufficient evidence of mitigation of his financial considerations security concern.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1d:	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. Clearance is granted.

NOREEN A. LYNCH
Administrative Judge