



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



In the matter of:

ISCR Case No. 15-06683

Applicant for Security Clearance

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: Cathryn E. Young, Attorney At Law

May 16, 2017

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of the Case**

On May 22, 2016, the Defense Office of Hearings and Appeals (DOHA) 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after September 1, 2006.

Applicant answered the SOR on June 10, 2016, and requested a hearing before an administrative judge. The case was assigned to me on October 3, 2016. DOHA issued a notice of hearing on November 3, 2016, and the hearing was convened as scheduled on December 5, 2016. The Government offered exhibits 1 through 6, which were admitted without objection. The Applicant offered exhibits A through I, which were admitted without objection, and he testified on his own behalf. He also submitted four

post-hearing exhibits marked and admitted without objection as Applicant's Exhibits J through M. DOHA received the transcript of the hearing (Tr.) on December 13, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is 50 years old, and married with two adult children. He is a graduate of an automotive technology school. He holds the position of Repair Mechanic for a defense contractor. He is seeking to obtain a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, not the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR.

Paragraph 1 (Guideline F- Financial Considerations) The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

The SOR alleges that Applicant has 22 past due debts totaling approximately \$9,000, and he has filed bankruptcy three times. Applicant admitted each of the allegations set forth in the SOR, except 1.d., 1.e., 1.m., 1.r., and 1.o., under this guideline. Credit Reports of the Applicant dated April 29, 2015, and August 13, 2016, reflect that at one time Applicant was indebted to each of the creditors set forth in the SOR. (See Government Exhibits 3 and 4.)

Applicant served in the United States Navy from 1984 to 1988, and received an honorable discharge. He has worked for his current employer since June 2002. He has held a security clearance since 2004. (Government Exhibit 1.)

Twenty years ago, Applicant spent money frivolously and made poor financial decisions that negatively impacted his finances. He admits that he was young, childish, and irresponsible. He filed for bankruptcy twice in 1996. In April 1996, he filed Chapter 7 bankruptcy to discharge his debts. (Government Exhibit 2.) In December 1996, he filed for Chapter 13. This bankruptcy was discharged in May 2002. (Government Exhibit 5.) Following this, Applicant was able to maintain a positive financial status and pay his debts on time for about fourteen years.

By 2010, Applicant was in financial trouble again. In September 2010, Applicant filed for Chapter 13 bankruptcy protection. (Government Exhibit 4.) This bankruptcy was discharged in November 2014. Applicant explained that this time, he had unforeseen circumstances that exceeded his financial resources that led to this filing.

Applicant explained that his daughter suffers from ADHD. Her work at a horse ranch helped her condition, and in about 2005, Applicant purchased an expensive show

horse for his daughter. Simultaneously, he believed that he could start a breeding business that could be lucrative, once he purchased the champion horse. In order to purchase the horse he borrowed \$20,000 against his house. He also well insured the horse. The horse fell ill on two occasions, which led to more than \$25,000 in vet bills. The horse then died. The insurance denied the claim leaving the Applicant with the debt. The insurance claimed that because there were two medical situations within a 12 month period, the insurance would not cover the bill. Applicant contacted attorneys for advice, but was told that he had no case.

Applicant's daughter was devastated by the death of the horse, disappeared for two years, and self-medicated with drugs. Due to expenses related to the horse, Applicant fell behind on other bills. He tried to work out payment arrangements with creditors, but was unsuccessful. In 2010, he filed for Chapter 13, and his monthly payments to resolve his indebtedness was about \$3,000 monthly. He worked overtime and volunteered to travel more at work to earn the money to pay his bills. Applicant's daughter eventually contacted him, letting him know that she was pregnant and needed a place to stay. She moved back in with the Applicant, had her baby, and then left again. Applicant now has legal guardianship of his grandson and provides all of his financial support. Applicant incurred unexpected expenses related to this situation.

Applicant also stated that his son started riding dirt bikes at an early age, and has over the years, incurred many serious injuries. Up until recently, Applicant has provided his medical insurance. Applicant was negligent in allowing these medical accounts to move into collection. The majority of the delinquent debts set forth in the SOR are for co-pays for medical services rendered to his son. Applicant intended to include all of those debts in his 2010 Chapter 13 bankruptcy, but at some point learned that many of them had mistakenly not been included. Since learning that these debts still remained owing, Applicant paid the debts off himself. Applicant submitted proof that the debt in allegation 1.d., was discharged. (Applicant's Exhibit A.) Applicant submitted proof of payments that resolve allegations 1.f., 1.g., 1.j., 1.l., 1.q., 1.w., and 1.x. (Applicant's Exhibit C.) He also submitted proof of payments that resolve allegations 1.h., 1.i., 1.k., 1.n., 1.p., 1.s., 1.t., 1.u, and 1.v. (Applicant's Exhibit D.) He submitted proof of payment for allegations 1.m, and 1.r. (Applicant's Exhibit E and K.) He also submitted proof of payment for allegation 1.o. (Applicant's Exhibit F.) He provided documentation that confirms that allegation 1.e., was disputed and removed from his credit report. (Applicant's Exhibit B.)

Applicant's personal financial statement indicates that together he and his wife bring home about \$12,400 monthly. (Applicant's Exhibit G.) He is now current with all of his monthly expenses, and has resolved all past due debt. They have created a monthly budget that they are following. They have their bills set up on automatic pay as to avoid delinquent accounts. Applicant has about \$45,000 in his retirement account, \$7,000 in his savings account, and \$2,000 in his checking account. He and his wife are finally financially stable, and now plan on working to build their retirement savings.

Letters for recommendation from Applicant's supervisor, coworkers, and friends, reflect his trustworthiness and responsible character. He is recommended for a security clearance. (Applicant's Exhibit I.)

A letter from the Applicant's wife confirms their financial problems of the past and their efforts to pay their bills, live within their means and improve their financial status. (Applicant's Exhibit H.)

Applicant has received a number of awards, recognitions and accolades for his efforts on the job. (Applicant's Exhibit M.)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the 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, 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." 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 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 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 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, 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 concern 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.

For many years, Applicant frivolously spent money he could not afford, including purchasing an expensive champion horse to help his daughter’s medical condition and to start a breeding business. Applicant had no expertise or background in this area and did not give careful consideration to the ramifications of such an investment. He also incurred numerous medical debts, as a result of his reckless son. In the past, he turned to bankruptcy as the solution to his financial indebtedness. This evidence is sufficient to raise the above disqualifying conditions.

More recently, however, he has come to realize that he must be financially responsible without the help of the court. He now understands that in order to maintain employment, and to avoid further difficulties in the future, he must be responsible with his finances. He must spend only what he can afford. Since 2010, when he filed his last bankruptcy, he has been working diligently to pay all of his bills on time. In addition, he paid off all of the medical bills that were mistakenly omitted from his 2010 bankruptcy.

The following Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(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.

Applicant made a series of poor financial decisions for many years in the past. Spending frivolously, and trying to accommodate his daughter's ADHD without careful consideration for his own financial affairs threw him into serious financial problems. Over the past six years, he has shown that he can be financially responsible. He has learned that he must pay his debts first before anything else. He has demonstrated this by resolving his past due indebtedness which shows reliability, trustworthiness, and good judgment. His delinquent debts of the past have now been resolved, and he understands that he must continue to be financially responsible in the future. There are clear indications that his finances are under control, and there has been a good faith effort to resolve his debts. The concern is mitigated.

### **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 has favorable recommendations from his employer and people who know him that further confirm his reliability and trustworthiness.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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 |
| Subparagraph 1.a.~1.x.:   | 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene D. Lokey Anderson  
Administrative Judge