



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



In the matter of:)
)
) ISCR Case No. 15-06847
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: Sean M. Bigley, Esq.

05/30/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On April 15, 2016, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on May 7, 2016, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on June 28, 2016. Applicant was afforded an opportunity to file objections and submit

material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant objected to Item 4, an unauthenticated personal subject interview. The objection is sustained, and Item 4 is not admitted into evidence. The remaining Items are admitted. With his answer, Applicant submitted exhibits marked as SOR Exhibits (Ex.) A through J, which are admitted into evidence without objection. In Applicant's response to the FORM, he submitted additional exhibits marked as Applicant Exhibits (AE) A through D. These were admitted into evidence without objection. The case was assigned to me on May 3, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c, 1.d, and 1.f and denied the allegations in 1.b and 1.e. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 31 years old. He is a high school graduate. He has attended an online college. He married in 2007 and divorced in 2010. He remarried in 2010 and subsequently divorced. There were no children from either marriage. He is remarried and recently had a child with his third wife. Applicant served in the military from 2004 to 2008, when he received a General Discharge under Honorable Condition. The basis of the discharge was misconduct. He had several Article 15 nonjudicial punishments under the Uniform Code of Military Justice. Applicant has been employed by a government contractor since July 2012.¹

Applicant was employed overseas with his present employer during tax years 2013 and 2014. He believed, based on advice from other overseas employees that he was not required to file a federal income tax return if he did not owe taxes because his income was earned overseas. Based on the amount of Applicant's overseas income, it was exempt from taxation for both tax years under the foreign earned income exclusion. However, he misunderstood that even if his income were exempt, he is still required to file tax returns. Once Applicant learned of his error, he filed his 2013 and 2014 federal tax returns. Applicant provided documentary proof that he filed the 2013, 2014, and 2015 federal income tax returns in April 2016, before receiving the SOR. He does not owe federal income taxes.²

Applicant did not file his state income tax returns for tax years 2013 and 2014. Under his state's laws, he is not required to file a return if he is not present in the state during the tax year. Applicant was living overseas for the entire tax years.³

¹ Item 2. At the time Applicant completed his security clearance application (SCA), he was separated from his second wife and in the process of obtaining a divorce. Based on information from his answer to the SOR and FORM, it is apparent the divorce was completed. He subsequently has remarried and recently had a child with his third wife. The dates of these events are unknown.

² AE A, B, C.

³ Item 1; SOR Ex, C; C (1); AE D.

Applicant attributed his financial problems to having two failed marriages at a young age and the stress of military reassignments. He admitted that some of his bills did not get paid. The SOR debts are supported by credit reports from October 2014, and March 2016.⁴

Applicant acknowledged he owed the debt in SOR ¶ 1.c (\$220) for a credit card that he no longer maintains. In April 2016, when he became aware the debt was not paid, he contacted the creditor and paid it. He provided proof of payment.⁵

Applicant admitted he owed the debt in SOR ¶ 1.d. He explained it became delinquent in 2015 when he was living overseas and the fluctuation of the dollar made it difficult to budget and caused financial strain. In August 2015, Applicant initiated a payment plan with the creditor to pay \$280 monthly. In May 2016, he paid the remaining balance and the debt is resolved. He provided supporting documents.⁶

Applicant denied the debt in SOR ¶ 1.e (\$16,761), explaining this debt was a deficiency balance owed on a repossessed vehicle that was jointly owned by him and his ex-wife. The repossession occurred after their separation in 2009, but prior to their divorce. Applicant had a verbal agreement with his wife that she would keep the car as her property provided she continued to make the payments. Prior to their separation, Applicant made the payments on time. He was never contacted by the creditor that the account was in default, and he was unaware that the deficiency could be accessed to him. Despite believing the debt belonged to his ex-wife, he settled it in May 2016, and provided documented proof.⁷

The debt in SOR ¶ 1.f is a personal loan that Applicant and his ex-wife obtained. He provided his ex-wife with money after their separation to pay his portion of the loan. She had agreed to remit the money along with her share to the creditor. She did not. Applicant was unaware that she did not make the payment. He paid the debt in April 2016.⁸

Applicant provided certificates of completion for two financial management courses. He also provided character letters that describe him as honest, patriotic, mature, responsible, professional, and reliable. In addition, he exercises sound judgment and has had no disciplinary infractions during his civilian employment. He provided a personal financial statement that shows he is living within his means.⁹

⁴ Items 1; 5, 6.

⁵ Item 1, SOR Ex. E.

⁶ Item 1, SOR Ex. H.

⁷ Item 1, SOR Ex. I.

⁸ Item 1, SOR Ex. J.

⁹ Item 1, SOR Ex. B, F, G.

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 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 avoided drawing 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 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 relating to the guideline 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.¹⁰

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant had delinquent debts that began accumulating in 2009. He failed to timely file his federal income tax returns for tax years 2013 and 2014. He provided sufficient evidence to conclude that he was not required to file state income tax returns while living overseas. He has successfully refuted SOR ¶ 1.b. There is sufficient evidence to support the application of the above disqualifying conditions.

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

¹⁰ 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 was misinformed as to his obligation to file federal income tax returns while working overseas. Upon learning of his obligation and before he received the SOR, he filed his 2013 and 2014 federal income tax returns. His entire income was exempt from federal taxes for both tax years. He also provided proof he filed his 2015 federal income tax return.

Applicant has paid all of the debts alleged in the SOR, even those that he asserted should have been the responsibility of his ex-wife, and which he was unaware had not been paid. He provided documentary proof of payment for all of the debts. Applicant attributed his financial problems to two failed marriages at a young age and the stress of military reassignments. He admitted that some of his bills did not get paid. After his separation from his second wife, he gave her money to pay accounts, and she failed to do so. To resolve those disputed debts, Applicant paid them.

Applicant's evidence supports that he is living within his means and his financial problems happened under unique circumstances that are unlikely to recur. It appears Applicant has matured and is taking his financial responsibilities seriously. He has participated in financial counseling and his finances are under control. All of the above mitigating conditions 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 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.

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 31 years old. He was confused about his obligation to file income tax returns while living overseas. He has filed all delinquent federal tax returns and does not owe taxes. He has paid all delinquent debts alleged in the SOR, even those that were attributed to his ex-wife's failure to pay her share. Although Applicant had some problems while serving in the military, character statements indicate that Applicant has matured, is a good worker, and is acting responsibly with regard to his finances. Applicant has met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations.

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 grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge