



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



In the matter of:)
)
) ISCR Case No. 15-07670
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Catie Young, Attorney At Law

June 6, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On June 29, 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 July 19, 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 7, which were admitted without objection. The Applicant offered Exhibits A through K, which were marked and admitted without objection, and he testified on his own behalf. He also submitted Post-Hearing Exhibits L through S, which were marked and admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 13, 2016.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He is divorced with one son. He has a Masters Degree in Business Administration. He holds the position as a Senior Systems Engineer for a defense contractor and is seeking to retain his security clearance in connection with employment.

Applicant admits each of the allegations set forth in the SOR under this guideline. The SOR alleges applicant is indebted to three creditors in the total approximate amount of \$15,000. In his Answer, Applicant admitted each debt. Each debt can also be found listed in credit reports dated May 31, 2008; August 13, 2014; September 23, 2014; and August 23, 2016. (Government Exhibits 4, 5, 6 and 7.)

Applicant served in the United States Marine Corps from 1998 to 2006. He was in a combat tour in Iraq just before he was honorably discharged in 2006, as a Sergeant E-5. He received a number of awards in recognition of his service including a Good Conduct Medal (with one star), Operation Iraqi Freedom Medal, a Sea Service Deployment Ribbon (with 3 stars), Global War on Terrorism Service Medal, the National Defense Service Medal and others. (Applicant's Exhibit Q.)

Applicant began working for his current employer in September 2016. He has held a security clearance since 1998. (Tr. p. 25.) His history of employment shows that he has worked for a number of defense contractors, has never incurred a security violation, nor has he had any disciplinary problems.

From 2007 through January 2012, Applicant was employed with a defense contractor, and for years 2008, 2009, and 2010, he was deployed overseas earning approximately \$328,000 annually. While overseas, Applicant had minimal living expenses. He spent his money carelessly, funding a lavish first-class lifestyle, traveling frequently to Hawaii, and going on cruises. He purchased several rifles and scopes to go to the shooting range. He explained that he would go to nightclubs and spend \$1,500 on a bottle service table. (Tr. p. 66.) From 2008 to 2012 he would gamble once or twice a month at different casinos, traveling to Las Vegas or Atlantic City with his fiancé. Each trip would cost him \$5,000 to \$8,000, not including the money he used to gamble. (Tr. p. 85.) Applicant does not believe these trips had any negative impact on his finances. He also spent money for improvements to his fiancé's house, installing a jacuzzi, a fence, and a theatre room. Although Applicant married in 2008, he divorced in 2009. Since 2008, Applicant has been required to pay child support. He was current with it until early 2015.

In 2011, when Applicant returned to the states, his compensation decreased to \$105,000 annually and he had living expenses to pay. However, he continued to live lavishly and well beyond his means. He now admits that he was immature and childish with how he handled his finances. He became excessively indebted and so behind on his debts, which by that time included credit cards and personal loans that he used to pay for vacations and other luxuries, that he was forced to file for Chapter 7 bankruptcy

in February 2014. His debts of approximately \$80,000 were discharged in May 2014. (Applicant's Exhibit P, Government Exhibit 3, and Tr. p. 35.) Following the bankruptcy, in 2014, Applicant purchased a two year old Mercedes, spending \$28,000 on the vehicle, financing it with a 17 percent interest rate. His car payments are currently \$806 monthly.

A federal tax lien was filed against the Applicant in February 2014, the amount of \$11,717 for back taxes owed. Applicant explained that in 2012 he cashed out \$20,000 in stock from his 401K, and he did not claim the money on his federal income tax returns. Applicant contacted the IRS in 2013, and then again in November 2016, and set up a five year payment plan to resolve this debt. He pays \$250 monthly. He has made four payments so far. (Applicant's Exhibit B.) Applicant has also adjusted his withholdings to pay more taxes in his paycheck. (Tr. p. 40.)

In December 2014, Applicant suffered a heart attack, and underwent two heart operations that month. He was on disability until he was laid off from his employment. (Applicant's Exhibit E.) While on disability, he missed three or four child support payments. At one point, he was indebted for child support arrears in the amount of \$3,898. He explained that his original child support order went into effect in 2008 in the amount of \$1,100. In 2012, the amount was adjusted to \$685 monthly. He states that he was current with his child support until January 2015. Applicant has now brought his child support payments current. (Applicant's Exhibit C, and Tr. p. 47.)

Applicant tried to go back to work immediately following his heart attack, as he needed the money and the medical coverage to continue. He became ill again, and had to stop working. He had to extend his disability for time to recover. During this time on medical disability, in June 2015, Applicant was unable to make his car payment. At one point, Applicant was behind in the amount of \$1,613 (two payments), with an outstanding balance of \$36,075. He states that he has made up the past payments and is now current on the payments. His monthly payments are \$806. (Applicant's Exhibit D.)

Applicant testified that in November 2016 he received credit counseling and has come up with an action plan and an estimated projected budget going forward. (Applicant's Exhibit L.) He hired an on-line company to train him on financial matters and states that he has learned that he has done some wasteful spending in the past that cannot be repeated. He currently earns \$116,000 annually. His monthly expenses are \$3,800 and his take home is \$4,200. He states that he uses the excess to reduce his credit card debt, as he currently has two credit cards with a \$450 and \$285 balance respectively. (Applicant's Exhibit G.) He has no retirement accounts and lives paycheck to paycheck. His financial budget indicates that at the end of the month, after making his regular monthly payments, he had \$200 left in discretionary funds. (Tr. pp. 95-96.)

Applicant states that he is currently single. He is renting a one bedroom apartment, and is frugal with his spending. (Applicant's Exhibit H and Tr. p. 56.)

Three letters of recommendation from professional associates of the Applicant, one from a past supervisor, and one from his current supervisor, each attest to Applicant's trustworthiness and high integrity. Applicant is considered to be a professional and proficient in his work, a leader, open and honest, and an asset to the organization. He is recommended for a security clearance. (Applicant's Exhibit J.)

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. Three are potentially applicable in this case:

- (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; and
- (c) a history of not meeting financial obligations.

Applicant’s financial history shows that except in December 2014/2015, when he experienced medical problems, he has always earned an excellent living. Instead of showing responsibility and good judgment over the years, he spent his money carelessly on luxuries and vacations, until he became so indebted he was forced to file Bankruptcy. He discharged \$80,000 in debt. He then went on to purchase a luxury vehicle, financing it at a 17 percent interest rate due to his bad credit standing. When he experienced his heart problem, he was not prepared financially to handle the situation and he again became delinquently indebted. The evidence is sufficient to raise the above disqualifying conditions.

Three 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; and

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

Admittedly, Applicant's heart attack, related surgeries, and disability period in late 2014 and 2015, negatively impacted his financial situation, and was something beyond his control. Since then, Applicant has set up a payment plan with the IRS to repay his taxes, and has made four payments. He is now current on his child support and his car payment and he has recently placed \$956 in a savings account. With that said, Applicant has made a series of poor financial decisions over many years. As a result, he has no retirement account, and is not prepared for an emergency of any sort, as states he lives paycheck to paycheck. His extensive history of excessive spending, casts doubt onto his current reliability, trustworthiness, or good judgment. Only recently has he shown a change in his lavish spending. However, there has been no sustained pattern of rehabilitation. At this time, it is not certain whether the spending habits of the past have been resolved or are under control or may soon resurface. More time showing a stable financial history and responsibility is needed in order to qualify for access to classified information. At this time, the concern remains unmitigated.

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 is well respected by his supervisor. Yet, he has made several questionable financial choices that do not demonstrate the judgment, reliability, or trustworthiness needed to hold a security clearance. There are significant unresolved concerns about Applicant's finances and judgment.

Overall, the record evidence leaves me with questions and doubts as to 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
Subparagraph 1.a.~1.d.:	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.

Darlene Lokey Anderson
Administrative Judge