



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



In the matter of:)
)
) ISCR Case No. 15-07199
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

02/09/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On March 29, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on April 29, 2016, and requested a hearing before an administrative judge. The case was assigned to me on October 5, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 20, 2016. I convened the hearing as scheduled on January 25, 2017. The

Government offered exhibits (GE) 1 through 5.¹ Applicant testified and offered Applicant's Exhibit (AE) A. All exhibits were admitted into evidence without objection. The record remained open until February 8, 2017, to permit Applicant to submit additional documents. He provided AE B and C, which were admitted into evidence without objection.² DOHA received the hearing transcript (Tr.) on February 2, 2017.

Findings of Fact

Applicant admitted all of the allegations in SOR except ¶ 1.c, which he denied. Department Counsel amended the SOR to correct the numbering of the paragraphs in sequential order.³ After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 50 years old. He earned a bachelor's degree in 2006. He served in the military from 1985 to 2006 when he retired with an honorably discharged in the paygrade E-7. He was married from 1987 to 1993. He has an adult child from the marriage. He remarried in 1995 and has been separated from his wife since 2014. He has 16-year-old twins from this marriage. He pays child support for the children.⁴

From 2009 to mid-2013 Applicant was employed. He was unemployed later in 2013 until he began work with his current employer in January 2016. He used the funds from his military retirement pay and unemployment benefits to pay his expenses while he was unemployed. Applicant testified that he has timely filed his Federal income tax returns in the past. In 2009, he could not afford to pay all of his taxes on time so he contacted the IRS to arrange a payment plan and increased the amount withheld from his income. He fell behind again in paying all of his taxes in 2010 and 2011. Each time he contacted the IRS and created a new payment plan.⁵

Applicant experienced financial problems when he and his wife separated, and he was unemployed. He indicated she was overspending. He spent money to "bail out" his stepson. He also had medical expenses that were not covered by insurance. He trusted his wife to pay the bills and she did not. He became overwhelmed with debt. He intends to file for divorce, but cannot afford it at this time. Applicant filed Chapter 13 bankruptcy in May 2014. Under the terms of the payment plan, Applicant pays the bankruptcy trustee \$702 a month, which is automatically withdrawn from his retirement pay. The creditors in SOR ¶¶ 1.d through 1.i are included in the bankruptcy plan. Also included in the plan is Applicant's tax debt to the IRS. Applicant provided documents to

¹ Hearing Exhibit (HE) I is an exhibit list. HE 2 is the Government's discovery letter.

² HE III and IV are the Government's emails indicating there were no objections.

³ Tr. 10. The paragraph after SOR ¶ 1.g identified as ¶ 1.e is now ¶ 1.h. The paragraph after the new ¶ 1.h that is labeled as ¶ 1.f is now ¶ 1.i.

⁴ Tr. 28-33; GE 1.

⁵ Tr. 33-41, 56-59.

show disbursements are being made to the IRS from the plan. He has been making consistent payments into the Chapter 13 plan since December 2014.⁶

Applicant disputed the judgment in SOR ¶ 1.c (\$455).⁷ Applicant provided proof that the judgment was satisfied in November 2015.⁸

Applicant participated in the mandated financial counseling required to file bankruptcy. He indicated his finances are coming under control. He is not responsible for debts his wife may incur.⁹

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 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 not drawn 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 to obtain a favorable security decision."

⁶ Tr. 11, 40-65; GE 2, 4, 5; AE A, B; Answer to the SOR.

⁷ The SOR alleged the judgment was filed in 2012. GE 3, a credit report from April 2015, reflects the judgment was filed in 2014.

⁸ GE 4; AE C.

⁹ Tr. 61, 63.

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 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.” 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.

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

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

¹⁰ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant had delinquent debts. He filed Chapter 13 bankruptcy in May 2014. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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; and

(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.

Applicant experienced financial problems when he was unemployed and separated from his wife. His wife was overspending and not paying bills. These conditions were beyond his control. His failure to pay his taxes was within his control. For the full application of AG ¶ 20(b), Applicant must demonstrate that he acted responsibly under the circumstances. Applicant separated from his wife in 2014 and filed Chapter 13 bankruptcy in order to resolve his debts. He has consistently complied with the bankruptcy payment plan for two years. AG ¶ 20(b) partially applies.

Applicant participated in financial counseling, and there are clear indications that his financial problems are being resolved and under control through his Chapter 13 payment plan. AG ¶ 20(c) applies. By filing Chapter 13 bankruptcy and making payments on the repayment plan, Applicant is demonstrating that he is not ignoring his delinquent debts, but is attempting to resolve them responsibly. AG ¶ 20(d) has some application.

Applicant disputed the judgment in SOR ¶ 1.c. He provided proof the judgment is satisfied. AG ¶ 20(e) applies to this debt.

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 a 50-year-old veteran. He experienced financial problems when he was unemployed from 2013 until he started working again in January 2016. His wife was overspending and not paying the bills. He is separated from wife, but cannot afford to file for divorce. He filed Chapter 13 bankruptcy in May 2014 and has been making consistent payments since December 2014, before he was gainfully employed, using his retirement pay. Applicant has not ignored his debts, but was unable to pay them when he did not have a job. He has acted responsibly in resolving them. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. Applicant mitigated 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

Subparagraphs 1.a-1.i:

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. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge