



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



In the matter of:)
)
) ISCR Case No. 15-07431
)
Applicant for Security Clearance)

Appearances

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

06/22/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations, by demonstrating that his delinquent debts have now either been paid or are otherwise current and being resolved. Applicant's eligibility for access to classified information is granted.

Statement of the Case

On April 5, 2016, the Department of Defense (DOD) 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; 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.

On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG). These AGs

apply to all adjudicative decisions issued on or after June 8, 2017. Any changes resulting from the issuance of new Adjudicative Guidelines did not affect my decision in this case. I provided Applicant a copy of the new AGs by e-mail on June 2, 2017.¹

Applicant answered the SOR on May 2, 2016, and elected to have his case decided on the written record in lieu of a hearing. On June 7, 2016, Department Counsel submitted the Government's file of relevant material (FORM), along with documents identified as Items 1 through 5. Applicant received the FORM on June 16, 2016. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted responses on June 29, 2016, and August 22, 2016, with documentation. Those documents are marked as Applicant's Exhibits (AE) A through AE D and admitted into evidence without objection. The case was assigned to me on April 10, 2017. On June 1, 2017, I e-mailed the parties and re-opened the record to enable Applicant to submit updated documentation,² which he did. Applicant's additional documents are marked as AE E through AE P and admitted without objection. Applicant did not object to the Government's evidence. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 5 are admitted into evidence without objection. The record closed on June 21, 2017, after Applicant submitted his updated documentation.

Findings of Fact

Applicant admitted all the SOR allegations but for ¶ 1.e, with explanations. I have incorporated his answers and relevant comments into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old. He was married from 2005 to 2013. He has two children, ages 13 and 18. He has worked as an emergency first responder for most of the last 12 years. From June 2005 to October 2009, and again from September 2010 to September 2014, Applicant worked in Iraq, under either Defense Department or State Department contracts, providing emergency services to military and coalition forces and U.S. diplomatic installations. In between, he briefly returned stateside and worked for a county fire department (Oct. 2009-April 2010), but he left that job due to the long commute. He was then unemployed until July 2010, when he returned overseas. He briefly worked in Saudi Arabia (July-September 2010) before returning to Iraq. Since September 2014, he has worked at an installation in the United States.³

¹ Hearing Exhibit (HE) I.

² HE II.

³ Item 3; AE A.

Applicant submitted a security clearance application (SCA) in January 2015. He disclosed several financial delinquencies, including credit card accounts and the mortgage on his home.⁴

The SOR concerns eight delinquent accounts. Five of them (SOR ¶¶ 1.a, 1.b, 1.c, 1.d and 1.g) are consumer debts, totaling \$13,857. One account (SOR ¶ 1.e) is a delinquent mortgage. One account (SOR ¶ 1.f) is an auto loan. One account (SOR ¶ 1.h) concerns \$12,000 in past-due alimony. All debts but for ¶ 1.h are proven by Applicant's 2015 and 2016 credit reports.⁵

Applicant and his wife separated in 2011, and their divorce was finalized in August 2013. He was ordered to pay three years of alimony payments at \$500 a month, for a total of \$18,000. He made one year of payments but still owed his wife two years' worth (SOR ¶ 1.h - \$12,000).⁶

Applicant indicated that in 2012 and 2013, while overseas, he earned \$184,000 a year. He lived within his means and was able to meet his obligations. In April 2014, his salary decreased to \$95,000 a year when the terms of the contract changed, though he did the same job at the same location. This made it difficult for him to maintain his mortgage, child support/alimony and other financial obligations. He attempted to refinance his mortgage, but had difficulty doing so from overseas.⁷

The current status of Applicant's debts is as follows:

SOR debts ¶¶ 1.a (\$333) and 1.d (\$991) have been paid. (AE L) SOR debt ¶ 1.b (\$1,164) has been paid and has a zero balance. (AE F) Applicant settled and paid SOR ¶ 1.c (\$5,580) for \$1,450. (AE I, AE L, AE N) Applicant is paying \$101 a month for SOR ¶ 1.g (\$5,789). As of June 2017, he owed \$6,581, down from \$7,186. (AE H, AE M)

Applicant could not afford to refinance his home through a traditional mortgage (SOR ¶ 1.e -- \$41,859 past due, total due \$208,070) so he attempted a short sale. The home was sold in February 2016. Documentation filed with the county recorder of deeds shows that the mortgage was satisfied and paid in full in March 2016.⁸ SOR ¶ 1.e is therefore resolved.

⁴ Item 3.

⁵ Items 2, 4, 5.

⁶ AE A.

⁷ Item 3; FORM Response.

⁸ Item 3 (court documents attached to answer); AE A, AE B.

In March 2016, Applicant was one payment past due (\$719) on his truck loan, with a balance due of about \$34,813 (SOR ¶ 1.f).⁹ He has made automatic monthly payments on the account since at least July 2016. As of June 21, 2017, the balance on the account was \$22,696 and the loan was in good standing. (AE P)

Since October 2016, Applicant has earned an annual salary of \$90,000 a year. (AE E, AE K) He recently moved in with his girlfriend, which lowers his monthly expenses. Both of his daughters moved in with them last summer. His younger daughter (13) remains with them and attends a local school. His elder daughter (18) returned last fall to live with her mother so she can graduate high school in her hometown. (AE E).

In July 2016, Applicant's ex-wife terminated the domestic relations case she filed against him. As of August 2016, he was still in arrears and was to pay \$100 a month until that is resolved, at which point the case would be closed out. (AE D) In June 2017, his former wife provided an agreement detailing that she has foregone any alimony he owed her, and he would in turn forego any child support that would be due to him for their younger daughter, who now lives with him. Their elder daughter no longer qualifies for child support. (AE O) SOR ¶ 1.h is therefore resolved.

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(a), 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 the 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.

⁹ Item 5.

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 Exec. Or. 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* Exec. Or. 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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

Applicant's delinquent debts are established by the record. There is sufficient evidence to support the application of disqualifying conditions AG ¶¶ 19(a) and 19(c).

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 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has been gainfully employed in the defense industry for many years. He fell behind on his monthly expenses and other debts after taking a significant cut in pay while working overseas. Once he returned to the United States, he undertook responsible action to pay and resolve the debts. He provided documentation that his debts have now been paid, forgiven, or are in good standing. He has regained financial stability and is living within his means. His financial issues are unlikely to recur and no longer cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b) and 20(d) 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

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

conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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. I also considered the factors that led to Applicant's financial issues and the steps he has taken to rectify them. Overall, the record evidence leaves me with no questions as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a-1.h: 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.

Braden M. Murphy
Administrative Judge