



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07992

Appearances

For Government: Andrew H. Henderson, Esquire, Department Counsel

For Applicant: *Pro se*

March 7, 2017

Decision

MOGUL, Martin H., Administrative Judge:

On February 10, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. (Item 1.) The action was taken under Executive Order 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 within the DoD after September 1, 2006.

On March 11, 2016, Applicant replied to the SOR (RSOR) in writing, and he requested that his case be decided on the written record in lieu of a hearing. (Item 1.) Two additional documents were attached to the RSOR. (Exhibits A and B.) On April 12, 2016, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered six documentary exhibits. (Items 1-6.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on May 22, 2016. Applicant submitted an additional document, which has been identified and entered into evidence without objection as

Item A. A request was made of Applicant to submit any documents showing his payment history for his tax debt, and also if he had a personal financial statement. A letter was submitted from the IRS, and that has been identified and entered into evidence without objection as Item B. The case was assigned to this Administrative Judge on December 13, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted additional documents, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 29 years old. He has been married since 1991, and he has three children. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists three allegations (1.a. through 1.c.) regarding financial difficulties, under Adjudicative Guideline F. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. The SOR alleges that Applicant failed to file a Federal and state tax return for tax year 2005. Applicant denied this allegation in his RSOR, and he wrote that he and his wife filed their taxes with a tax return service. Applicant attached Exhibit A to his RSOR, which is a letter from the Internal Revenue Service (IRS) establishing that a tax return was filed for tax year 2005, and that Applicant was issued a refund of \$4,262 on February 6, 2006. However, when Applicant completed his Electronic Questionnaires for Investigations Processing (e-QIP), he wrote that he failed to file Federal and state tax returns for tax year 2005, because he "had a business license but the business did not due [sic] well due to bad economy, [so he] closed the corporation."

1.b. The SOR alleges that Applicant is indebted to the Federal Government for delinquent taxes in the approximately amount of \$6,020 for tax year 2012, which at the date of the SOR remained unpaid. Applicant admitted this allegation in his RSOR, and he wrote that he has made an arrangement with the IRS to repay this debt of \$6,656.29 in back taxes in the amount of \$120 a month until the debt is paid. Exhibit B and Item B establish that Applicant does have a plan in place; and starting on January 28, 2017, \$200 a month will be withdrawn electronically from his account to pay off this debt. I find that this debt is now beginning to be resolved.

1.c. The SOR alleges that Applicant filed a Chapter 7 Bankruptcy on or about April 2014, and the bankruptcy was discharged in July 2014. Applicant admitted this allegation in his RSOR, and he wrote that he and his wife purchased a home in 2005, but when the real estate market was badly damaged in 2008, they became "upside down" on their mortgage. This resulted in them losing their house in foreclosure in 2009,

and the loss of approximately \$100,000 in equity. In their attempt to minimize their losses they were driven further into debt. Finally, Applicant wrote, "We have worked hard since the bankruptcy to keep our finances in order and pay our debts in full."

Applicant submitted a Post-FORM letter from his landlord, indicating that Applicant was and continues to be current on his rent. (Item A.)

Applicant addressed his financial situation in the summary of a Personal Subject Interview (PSI) conducted on August 11, 2015. Regarding his financial difficulties, they included his problems with his primary residence being reduced in value due to the downturn in the economy, and with the raising of his mortgage payments he was unable to stay current with the mortgage payments. He also lost his overtime pay that he had counted on to help him pay for his bills. Finally, Applicant became overdue on his taxes after he took a payment from his retirement plan to help him pay his debts. This resulted in him owing more for taxes than he realized he would have to pay. As far as his recent financial status, Applicant indicated that he has obtained a higher paying job, giving him greater ability to pay his debts, and since his previous debts were discharged in Chapter 7 Bankruptcy, all of his newer accounts are now current, and he intends to continue to pay his debts in a timely manner in the future. (Item 3.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 AG ¶ 2(a) describing the adjudicative process. The administrative judge's over-arching 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, 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 as to obtaining a favorable clearance 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 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 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.

The guideline notes several conditions that could raise security concerns and could potentially apply in this case. Under AG ¶ 19(a), “inability or unwillingness to satisfy debts,” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations,” may raise security concerns. Because of Applicant’s bankruptcy and his Federal tax delinquency, I find that both of these disqualifying conditions could be argued to apply to Applicant in this case. The evidence has established that Applicant accumulated delinquent debt, some of which has not been satisfied, and some which has been satisfied by the legally available remedy of bankruptcy. Also, AG ¶ 19(g), “failure to file Federal, state or local income tax returns as required . . .” could be argued to apply in this case.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. I find that mitigating condition AG ¶ 20(a) applies to the lack of filing of Applicant’s Federal and state tax returns for tax year 2005, as the behavior happened

only for one year, more than 10 years ago, and the failure to file was because the business failed. Also, Applicant did file his personal tax returns for that year. Under AG ¶ 20(b), it may be mitigating where, “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.”

As reviewed above, Applicant explained his financial difficulties occurred, in part, because of the downturn in the economy, which resulted in Applicant losing his primary residence in foreclosure and also his inability to continue working overtime, which provided him with less income than he had reasonably expected. I find that Applicant has been responsible in attempting to resolve, the resulting overdue debt, both in using the legally available remedy of bankruptcy, and also making a payment plan with the IRS to help him resolve his overdue tax debt. Therefore, I find that this mitigating condition is a factor for consideration in this case. Finally, AG ¶ 20(d) is applicable and controlling, as there has been significant evidence introduced to establish that Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve [his] debts.” Therefore, I find that Applicant has now mitigated the Financial Consideration concerns, which are found for him.

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. Based on all of the reasons cited above as to why the mitigating conditions are applicable, I find that the record evidence leaves me with no significant questions or doubts as to Applicant’s eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns under the whole-person concept.

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.c.: 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.

Martin H. Mogul
Administrative Judge