



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



In the matter of:)
)
) ISCR Case No. 15-08133
)
Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

05/17/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 8, 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 (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on August 8, 2016, and requested a hearing before an administrative judge. The case was assigned to me on January 18, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 28, 2017, scheduling the hearing for April 6, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 20, 2017.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer since 2008. He seeks to retain a security clearance. He has a bachelor's degree, which was awarded in 2001, and he attended post-graduate school in 2007 to 2008 without earning an additional degree. He is married with four minor children.¹

Applicant and his wife overused credit in the late 2000s, and they developed financial problems. They filed a Chapter 13 bankruptcy case in February 2009. Under Schedule D, Creditors Holding Secured Claims, the petition listed \$267,230 in secured claims, which included first and second mortgage loans and two vehicle loans. There were no claims under Schedule E, Creditors Holding Unsecured Priority Claims. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed debts totaling \$110,324, which included about \$40,000 in student loans. Applicant paid into the approved plan for five years, and his dischargeable debts were discharged in April 2014.²

Applicant's five student loans were transferred to one entity for collection. The trustee made payments toward Applicant's student loans from August 2013 through January 2014. Applicant knew that the student loans were not paid for most of the bankruptcy, but he did not expect them to grow as much as they did because of the accumulation of interest. He did not pay the student loans after the bankruptcy as he attempted to negotiate a lower monthly payment. The loans went into default.³

In November 2015, Applicant began a repayment agreement under a loan rehabilitation program in which he agreed to pay \$59 per month for nine months. He made all the required payments through July 2016. The loans came out of default and were transferred to another entity. It took some time for Applicant to negotiate a manageable payment schedule.⁴

The finalized payment arrangements require Applicant to make 24 monthly payments of \$357, with the first payment due in April 2017, followed by 87 monthly payments of \$899. He made the first \$357 payment. In April 2017, the balance on the loans was \$61,829.⁵

¹ Tr. at 21, 35-36, 38; GE 1, 2.

² Tr. at 15, 20-23; Applicant's response to SOR; GE 2, 3.

³ Tr. at 15-17, 23-26; Applicant's response to SOR; AE A.

⁴ Tr. at 16-20, 25-29; Applicant's response to SOR; AE A.

⁵ Tr. at 15-16, 29; AE A, B.

Applicant accepted responsibility for his financial problems and allowing his student loans to languish. He credibly testified that he intends to continue to pay his student loans. He received financial counseling. He stated that he has matured and learned a valuable lesson. He and his wife now save for purchases and use credit cautiously. The only accounts with balances on his March 2017 credit report are his mortgage loan, which is current, and his student loans.⁶

Applicant submitted letters attesting to excellent job performance, dedication, work ethic, honesty, commitment, and integrity.⁷

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 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."

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 safeguard

⁶ Tr. at 16-17, 20, 30, 36-37, 39-40.

⁷ AE C, D.

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 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:

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 under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant had financial problems resulting in a Chapter 13 bankruptcy case. He neglected his student loans, and they went into default. The above disqualifying conditions are applicable.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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;
- (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 should have been more diligent about his student loans. He receives minimal credit in mitigation under AG ¶¶ 20(a) and 20(d) because he still has a long way to go to pay his student loans. Nonetheless, he consistently paid his bankruptcy plan for five years; he paid his student loans under a rehabilitation program for nine months; and he now has a set payment plan. He credibly testified that he intends to pay his student loans. His finances are now in order. AG ¶ 20(c) is applicable.

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. I also considered Applicant's favorable character evidence. His financial history is not perfect, but I am convinced that he will adhere to his payment plan for his student loans.

Overall, the record evidence leaves me without questions or doubts 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	For Applicant
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Subparagraphs 1.a-1.f:	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge