



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-08274

Appearances

For Government: Carroll Connelley, Esquire
For Applicant: *Pro se*

03/24/2017

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On July 11, 2016, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued 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; 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 on September 1, 2006.

In a response notarized on August 18, 2016, Applicant admitted 19 of 23 allegations raised under Guideline F and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on January 10, 2017. The matter was scheduled on January 12, 2017, for a February 2, 2017, hearing. The hearing was convened as scheduled.

The Government offered six documents, which were accepted without objection as exhibits (Exs.) 1-6. Applicant offered testimony. The record was held open through

February 24, 2017, in the event the parties wished to submit additional material. The transcript (Tr.) was received on February 8, 2017. On February 24, 2017, the Government forwarded, without objection, a seven-page narrative containing supplemental materials. The item was accepted as Ex. A, and the record was closed.. After review of the record as a whole, I find that Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 57-year-old small business owner who has owned his present business since 2012. He first obtained a security clearance when serving in the United States Marine Corps, from which he was honorably discharged after serving on both active and reserve duty from 1977 through 2013. During that time, he served on three combat tours and disaster relief operations. He has earned both a bachelor's degree and a master's degree.

Applicant has been married three times, twice ending in divorce. He has four children, ranging in age from 32 to 17 years of age. Two of them are serving in the United States military and a fourth is preparing to follow their lead. Of the 23 financial concerns at issue, debts totaling approximately \$100,000, Applicant denies four of the debts as either paid or as having been included in a past bankruptcy action. (Tr. 8)

Before the events of 9/11 in 2001, Applicant was self-employed, financially stable, and owned his own home. His only past financial issues were resolved in 2002, after he filed for Chapter 7 bankruptcy protection. By the end of September 2001, however, he was recalled to military service and deployed to the Middle East. During that time period, without his guidance, his business failed. Much of his equipment was leased or otherwise liquidated. He filed for Chapter 7 bankruptcy in about June 2002 and his debts were discharged in April 2003.

In 2007, Applicant purchased a home at the height of a local real estate bubble. In 2010, he and a wife prepared to divorce. By that time, the home had depreciated considerably, causing a loss of approximately \$150,000 on the property. During the divorce, he had to buy out her share of the home and sacrifice half of his retirement fund, savings, and other assets. (Tr. 17) His soon-to-be ex-wife moved out, leaving two of the children at home with Applicant to raise. Under these circumstances, he had considerable debt.

From 2010 to 2011, Applicant was getting off active duty and building his company back. Because he was not yet 60 years of age, he was not yet eligible for full military retirement. Meanwhile, he won a significant contract in late 2011 and one in at the beginning of 2013. He had put all his remaining savings into a different business. At the end of 2013, the Government was unable to reach a budget causing a shut down. One of the results was the cancellation of numerous contracts, including those held by Applicant's company. He also lost his medical insurance. Assessing his financial situation he filed Chapter 13 bankruptcy in January 2013. His action was dismissed later

that month for failure to include required documents, an action he initiated because he did not feel this was the right way to address his finances. (Tr. 21)

In August 2014, Applicant's son began experiencing serious health issues. Multiple emergency room visits, therapy, and time at a mental health facility added to Applicant's acquisition of debt. Because Applicant's son had special needs and was unable to go to school, Applicant cared for his child 24 hours a day and home-schooled him through January 2015. All of these factors combined to deplete Applicant's financial reserves and led him to borrow money.

Toward the end of 2014, Applicant had caught up on past arrearages related to child support. His ex-wife took him to court and applied for an increase in payments based on "potential," not actual income. (Ex. A at 3) This increased his child support monthly payments to \$831 at a time when he was at home with his son and could not afford the increased amount. At present, he is almost caught up on arrearages and has been regularly meeting the new amount for nearly a year and a half. (Ex. A at 3)

In June 2016, Applicant relocated to care for his aging parents. Meanwhile, he has teamed with a major computer technology corporation, where he has redeveloped his company's software to run on its platform. That entity has recently started selling Applicant's company's product. His business has multiple proposals pending with the private sector and local governments. It recently won two Federal government contracts it is now executing, and is currently supporting the Federal government and DOD through five contracts. Overall, the business is reemerging on a highly positive note.

Meanwhile, Applicant has economized with considerable diligence. He has only maintained used cars since 2011. He is living within his means. He has put his student loans into rehabilitation. (Ex. A at 5) He is current on his regular, monthly obligations. (Ex. A at 6) With his small business thriving and expanding, he hopes its growth will also increase his own personal finances, as well.

At issue in the SOR are 21 delinquent debts (1.c-1.w). The delinquent debts noted at 1.c-1.i and 1.v, (\$572, \$572, \$2,632, \$2,066, \$781, \$214, \$18,225, and \$204), are related to Applicant's son's medical care between 2013 and 2014. (Tr. 29, 58) Applicant has made some payments on all these debts, except for the one cited at 1.f which he is disputing, but he did not provide documentary evidence of those payments or that dispute. (Tr. 29-34)

The debts cited at 1.j through 1.n are related to student loans amounting to slightly over \$55,600. Those debts were shown to be in rehabilitation with a current combined balance of \$56,314. (Ex. A at 5; Tr. 37-39) Under the rehabilitation plan, the lender will accept monthly payments of a minimum of \$5.

With regard to the debt reflected at 1.o concerning a \$4,795 child support arrearage, Applicant stated he has been paying his monthly child support payment of \$831, plus an extra \$331 a month to address the arrearage. Although he provided

documentary evidence of timely payments of his monthly \$831 obligation, there is no similar documentation reflecting the supplemental \$331 payments. (Tr. 43-45)

The debt at 1.p for \$45,324 involves a mortgage account on a house he lost to foreclosure in 2007. Applicant wrote that it had been included in his last bankruptcy petition, but he did not provide documentation reflecting that assertion. (Ex. A at 6) Applicant admitted he has not addressed the delinquent debt at 1.q for \$1,284 that was charged off. (Tr. 52)

Applicant said he paid debt at 1.r for \$367 owed to a telecommunications entity and provided a current statement from that company showing a zero balance forward. However, the credit report citing this debt reflects a different account number and shows that the account was closed. Therefore, there is insufficient proof to find this has been paid. (Ex. 3 at 2; Tr. 53-54)

The debt at 1.s is for \$15,000, related to Applicant's legal fees from his 2010 divorce. He expected the final bill to be about \$6,000, but it ended up considerably larger. He testified that he has made some payments, amounting to about \$1,000, but he provided no documentary evidence reflecting such efforts. (Tr. 55) He similarly failed to provide documentary evidence of payments on the \$2,548 balance for a home owner's association balance noted at 1.t, a telecommunications balance of \$367 cited at 1.u, or a \$55 parking ticket reflected at 1.w.

At present, Applicant runs his business with some partners who take no salary. His salary payments vary in timing due to the timing of the company's various contracts. A recent contract brought him a payment of about \$9,000. (Tr. 62-63) At present he has about \$3,000 in his checking account and under \$1,000 in his savings account. (Tr. 62) His monthly mortgage payment is \$470, utilities run about \$350 a month, \$432 per month for telecommunications, his vehicles are paid off, and no other large or notable monthly expenses. (Tr. 66) Applicant last received a tax refund of about \$1,500. His income last year was about \$40,000 and his wife has an annual salary of about \$15,000. (Tr. 67) Applicant has not received financial counseling. (Tr. 69) His wife manages the household bills and utilizes a budget. (Tr. 69) Applicant does not squander money. (Tr. 71) He presently lives within his means while building his company.

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 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, 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.”

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. 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).

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence indicating that Applicant has multiple delinquent debts amounting to about \$151,000. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 faced multiple dilemmas impacting his finances. His recalls to active military service constructively curtailed his small business and his divorce adversely impacted both his savings and his income between 2010 and 2012. To address mounting debt, Applicant initiated a Chapter 13 bankruptcy filing in January 2013. When he let the action be dismissed, however, Applicant proceeded without first identifying or implementing an alternative methodology for addressing his debts. Moreover, from August 2014 through January 2015, Applicant homeschooled and provided around-the-clock care for his son after the child was hospitalized and spent time in a mental health facility. With his son, he borrowed what was needed to provide care for the child before he exhausted his financial reserves before borrowing what was needed to return his son to health. The sources of this borrowing were not identified. However, given that these factors were clearly outside of Applicant's control the circumstances, I find AG ¶ 20(b) applies in part.

Applicant has not received financial counseling, although his wife is apparently managing their current budget efficiently. Applicant provided documentary evidence reflecting that his student loans have been put into rehabilitation, where the lender will accept monthly payments of a minimum of \$5. However *de minimis* those payments on a debt balance of over \$50,000 may be, it does indicate an effort. While this may raise AG ¶ 20(d) to the limited extent it indicates a good-faith effort to some of the debts at issue, Applicant's lack of documentary substantiation regarding any of the other accounts undermines application of AG ¶ 20(c). Finally, as no documentary evidence

was offered showing any formal disputes have been initiated, AG ¶ 20(e) does not 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 conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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 incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) noted in the factual findings were addressed under that guideline, but some warrant additional comment.

Applicant is a highly credible 57-year-old small business owner who served this country in the United States military honorably from 1977 to 2013, both in an active and reserve capacity. Indeed, his business was adversely affected by his return to service after the tragedy of 9/11. He lost a considerable amount of money in the housing market, then half of his savings, retirement account balance, and other assets in a 2010 divorce. He was subjected to an increased monthly child support payment at a time when he was caring for an ill child 24 hours a day, then acquired an arrearage as a consequence. His constant care of his son during a six-month period of mental health issues, surgery, and confinement, led to the depletion of Applicant's remaining financial reserves. Throughout it all, he has tried to move on and focus on his business, which is now poised for overdue success.

There is no doubt Applicant has sacrificed for his country and his family. Based on his testimony and post-hearing submission, he has made significant progress on the delinquent debts at issue. However, Applicant failed to provide corroborative documentation supporting his assertions of action. This process expects that an applicant employ a reasonable strategy or plan to address one's delinquent debts. It then requires documentary evidence that such a plan has been successfully implemented.

Applicant's plan, as described, reflects an approach of addressing one debt at a time in the best manner appropriate. This was shown by what he has thus far done with his student loans. Unfortunately, other efforts were not documented. While it appears he is currently living within his means, there is insufficient documentary evidence of progress on the substantial sums at issue to conclude financial considerations security concerns have been mitigated.

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.b:	For Applicant
Subparagraphs 1.c-1.i:	Against Applicant
Subparagraphs 1.j-1.n:	For Applicant
Subparagraphs 1.o-1.w:	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge