



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-00447

Appearances

For Government: Andre M. Gregorian, Esquire, Department Counsel
For Applicant: *Pro se*

02/09/2018

Decision

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

Statement of the Case

On June 17, 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) and Guideline E (Personal Conduct).¹ In a July 17, 2016, response, Applicant admitted all allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on May 24, 2017. The matter was scheduled on May 24, 2017, for a July 27, 2017, hearing. The hearing was convened as scheduled.

The Government offered eight documents, which were accepted without objection as exhibits (Exs.) 1-8, and two Hearing Exhibits (Hxs.), which were accepted without objection as Hxs. I-II. Applicant offered testimony, introduced one witness, and

¹ 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 or after September 1, 2006. Since that time, the AG has been again amended. The present AG, applied here, is in effect for any adjudication on or after June 8, 2017.

offered 13 exhibits, accepted without objection as Exs. A-M. The record was kept open through August 11, 2017, to provide additional time for the submission of supplemental materials. The transcript (Tr.) was received on August 4, 2017) With no additional materials received, the record was closed on August 11, 2017. Based on the testimony, materials, and record as a whole, I find Applicant mitigated security concerns.

Findings of Fact

Applicant is a 54 year old electronics technician who has been in his present position for about three-and-a-half years. He served in the United States Navy from 1984 until he received an under other-than-honorable conditions discharge (UOTHD) in 1986.² He has since earned an associate's degree and had financial counseling, which he found helpful in addressing his debts. (Tr. 24) He is married and he has no children.

Applicant worked for a federal contractor from 2005 until he was laid off in October 2010. This was the beginning of a rocky period for defense contractors due to Federal cut backs and defense sequestration. He was unemployed from October 2010 through June 2011. He found similar work in July 2011, but was again subject to a layoff in September 2012. Applicant was consequently unemployed again until September 2013, when he began a "very much lower" paying job. (Tr. 26) His salary has risen over time.

Today, Applicant earns approximately \$70,000 a year. Before these periods of unemployment and reduced income, Applicant had never had financial difficulties. Indeed, he had bought his own home and put about \$50,000 worth of improvements into the residence. (Tr. 27) Initially, he survived these periods of unemployment and reduced salary by making withdrawals from his 401k retirement program. That source, however, was eventually depleted.

In March 2015, Applicant filed for bankruptcy under Chapter 7, noting liabilities totaling approximately \$218,000. Of that sum, nearly \$40,000 was for delinquent taxes and student loans.³ (Tr. 27-28). Applicant attributes these debts to his periods of unemployment, and his more recent period of employment on notably reduced salary. His eligible debts were ultimately discharged in June 2015.⁴

² The UOTHD was for misconduct (drug abuse). Applicant was deemed a rehabilitative failure due to his refusal to participate in a formal substance abuse program, as required. He does not know why alcohol abuse was noted because his official misconduct was only for using marijuana. (Tr. 43) He has not used marijuana in 15 years. (Tr. 43)

³ This information forms part of the allegation at SOR 1.a. Ultimately, the taxes and student loan debts were deemed ineligible for discharge through bankruptcy.

⁴ Meanwhile, overdue non-dischargeable tax liabilities owed to the Internal Revenue Service (IRS) began being paid in monthly sums of \$114 in 2016. These tax liabilities were the result of under-withholding after he married, and penalties associated with withdrawals from his 401k retirement account when he needed to access funds while unemployed. (Tr. 30-32) His present balance is about \$9,000.

Aside from the Chapter 7 bankruptcy, noted in the June 2016 SOR at 1.a, the following delinquent debts are at issue:

1.b – student loan – 150 days or more past due (\$34,047) – This debt was deemed non-dischargeable by the bankruptcy court. Applicant's student loans were deferred until 2016. The original balance was for \$41,704, but the current principal balance is \$35,980. Applicant showed he has been making payments on this debt since September 2016. (Tr. 34-35; Ex. F) He plans to continue making timely payments on the debt until it is satisfied.

1.c – telecommunications balance (\$89) – Applicant was originally unaware of this account and its reference in his credit reports. Although Applicant initially denied responsibility for this balance, he paid it on July 15, 2016, to eliminate it as a concern. (Tr. 35; SOR Response)

In June 2017, Applicant's wife realized her dream of opening a bakery. Applicant helped her find a storefront and buy the necessary items to help the venture begin. The landlord has let her develop the space and start operations without paying rent, affording her time to become established. At the time of the hearing, the bakery had only been open for two months. While she was not then making a profit, the location holds promise. (Tr. 36) He is helping her apply for a small business grant to help grow the business without his investing additional income.

At the time of the hearing, Applicant's finances were temporarily stretched due to his recent contributions toward the bakery. He had about \$1,000 in his bank account. (Tr. 38) After expenses, he had a monthly net remainder of at least \$400. (Tr. 39) Investment in the bakery is the only large expenditure Applicant has made in the past three years. His taxes are up-to-date, his monthly bills are paid, and his cars are paid off. Due to recent raises, his finances are "definitely improving" and returning to where he was before his multiple periods of unemployment and period of underemployment. (Tr. 40)

Applicant has thrice been involved in alcohol-related incidents leading to adverse legal action. After a July 1995 incident where he ran a stop sign, hit another car, and fled, Applicant was found guilty of leaving the scene of an accident with injury, a felony, and making a false report.⁵ He had consumed about four alcoholic drinks before the accident. Although he was unaware at the time that an injury was involved, he was found guilty and ordered to serve 18 months of probation, perform 50 hours of community service, attend driving under the influence (DUI) school, and fined \$250.

On New Year's Eve in 1998, after consuming a six-pack of beer and driving, Applicant was arrested for DUI. He was found guilty and ordered to pay \$785 in fines and court costs, ordered to attend a DUI school, attend one victim impact panel, and

⁵ The morning after the accident, Applicant reported his vehicle as stolen. (Tr. 47) He was never diagnosed as being abusive of alcohol during his DUI class.

serve probation for one year. In addition, his driving privileges were revoked for six months. He was not diagnosed with an alcohol-related disorder during the DUI school.

In November 2012, Applicant had drinks in a bar before driving to his hotel. He was pulled over by the police and found to have a blood alcohol limit over the legal limit. He was ultimately found guilty of driving while impaired (DWI) and ordered to pay fines and costs of about \$660, perform 48 hours of community service, and obtain an alcohol assessment. He also had his driving privileges suspended.

Between July 2016 and October 2016, Applicant underwent alcohol counseling and assessment. There, he was assessed as an alcohol abuser.⁶ Applicant has not driven after drinking since November 2012, and he has not consumed any alcohol since early August 2013. (Tr. 54-55) Thus, he has ended a habit of consuming alcohol on weekends and getting drunk about once a month, a habit he started at about age 17. (Tr. 54) He is committed to maintaining sobriety going forward. Applicant stated: “[a]fter that last alcohol driving incident, that’s when I realized it is getting to be too much. I had a heart-to-heart with my mother at her graveside. I made a promise to her, and then straightened my life out as far as alcohol.” (Tr. 57)

Applicant speaks openly about his past alcohol issues with others. (Tr. 56) His spouse, peers, and co-workers are supportive. His wife does not drink alcohol due to medical reasons. (Tr. 55) Although the couple is very close, she has made it clear that she would “probably end up leaving him” if she were to catch him drinking. (Tr. 58)

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 the AG, 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. Any doubt concerning personnel being considered for access to classified information will be

⁶ Applicant had not been informed by his counsel that he needed to seek counseling and assessment as part of his 2012 conviction. (Tr. 53) When he later found it was a requirement, he enrolled in this program.

resolved in favor of national security. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the record evidence.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. Under the Directive, 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 seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Decisions are in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant.

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 or sensitive information.

Here, the Government offered documentary evidence reflecting that Applicant filed for Chapter 7 bankruptcy in 2015 and presently has \$34,136 in delinquent debt. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so; and

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

Five conditions could mitigate the finance related security concerns posed here:

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated and is adhering to 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.

The multiple delinquent debts at issue date back to earlier periods of time when Applicant was laid off or underpaid. This explains the creation of the 2015 bankruptcy petition at issue. The student loan, which represents the overwhelming majority of the balance now noted in the SOR as past due, was not eligible for discharge in that bankruptcy petition. During his periods of unemployment and underemployment, Applicant resorted to withdrawals from his retirement account until it was depleted, even though those efforts incurred penalties. Such facts are sufficient to raise AG ¶ 20(b).

Although Applicant did not address the \$89 debt at 1.c until a month after the SOR was issued, I note that he filed the bankruptcy petition to address debts, which had become delinquent during his periods of unemployment and underemployment predate the SOR. I also note that the student loan at issue was deferred until 2016, so it was not laxity that led to his inaction on that debt when it was deemed ineligible under the bankruptcy petition. Once the deferment ended, payments were apparently negotiated and commenced by at least September 2016. Applicant attributed some of his success with his finances to his financial counseling. Today, the Chapter 7 bankruptcy has long been discharged, the student loan has been in regular repayment, and the nominal \$89 debt has been paid. Both AG ¶ 20(c) and AG ¶ 20(d) apply. Inasmuch as Applicant has not formally disputed any debt, however, AG ¶ 20(e) does not apply.

At present, Applicant and his wife are invested in a new bakery. It is new enough (two months) that no profit has yet been realized. However, the venture has been funded, and he is pursuing a grant to allow further development in the business. Now recouping from his investment, and now earning a more substantial salary, Applicant retains a modest net monthly remainder after paying all of his monthly obligations. Applicant is sufficiently aware that any business venture presents risks. However, he is aware of the repercussions should he again find himself in financial arrears, is prepared to take any ameliorative action necessary, and rely on his financial counseling training.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. Here, Applicant admits that he was involuntarily discharged from the military in the 1980s and found guilty of alcohol-related charges in 1995, 1998, and 2012. Therefore, the following disqualifying condition applies:

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . . (2) any disruptive, violent or other inappropriate behavior; [and] (3) a pattern of dishonesty or rule violations.

AG ¶ 17 describes conditions that could mitigate security concerns. Potentially applicable in this matter are:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(b): the refusal or failure to cooperate, omission, or concealment was cause or significantly contributed to by the advice of legal counsel or a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to

alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

In 2013, Applicant quit drinking alcohol after he made a commitment to himself, and a promise to his late mother, to address his drinking habits. He has since completed an alcohol counseling program successfully. He has made necessary changes in his life to avoid future alcohol abuse. He is open with others about his past alcohol issues. He is aware that any future alcohol abuse would not only jeopardize his employment, but potentially terminate his marriage. He has not engaged in the same type of conduct that led to his military discharge. In light of these factors, I find AG ¶ 17(d) and AG ¶ 17(d) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the her conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 54 year old man. He is married, has no children, and has earned an associate's degree. He has been in his present position as an electronics technician for about three-and-a-half years. He received an UOTHD from the United States Navy in 1986 after almost two years of service due to circumstances related to marijuana use.

Between October 2010 and September 2013, Applicant experienced what amounts to almost two years of unemployment. He ultimately found a job, but it generated a notably reduced salary. Over time, he has risen in income to a level close to what he was earning before the layoffs began. Today, he is living within his means, meets his monthly obligations, and has no debts. Applicant's 2015 bankruptcy was the result of his rocky professional life from October 2010 until his current job's salary began to rise. His student loan debt, which was ineligible for discharge in bankruptcy, has been rehabilitated through his resumption of timely repayment. The nominal \$89 debt, which Applicant questions as being his, was paid to eliminate any related security concerns. After financial counseling, he has a better understanding of household management.

Alcohol abuse led to convictions for drunk driving charges in 1995, 1998, and 2013. After the last incident, as he was turning 50, he knew it was time to quit the habit of drinking to excess on weekends and comport his behavior. He has successfully

completed counseling and has a support system consisting of a network of peers and friends. He is aware that future alcohol abuse could jeopardize not only driving privilege and employment, but possibly his marriage. Based on all of the above, I find Applicant mitigated financial considerations and personal conduct 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
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.d:	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.

Arthur E. Marshall, Jr.
Administrative Judge