



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



In the matter of:)
)
) ISCR Case No. 16-01843
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: Linda Robinson, Personal Representative

12/19/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant's financial difficulties are due to circumstances beyond his control, including periods of unemployment, under-employment, and low income. Having found full-time employment, he is making responsible efforts to resolve his debts, through Chapter 13 bankruptcy, and his finances have stabilized. He has mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 14, 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 (Exec. Or.) 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 implemented by the DOD on September 1, 2006.

Applicant answered the SOR on October 17, 2016, and requested a hearing. The case was assigned to me on August 14, 2017. The hearing convened on September 18, 2017, as scheduled. At the hearing, Department Counsel offered documents marked as Government Exhibits (GE) 1 through 5. Applicant and five other witnesses testified. He offered eight exhibits, which were marked as Applicant's Exhibits (AE) A through AE H. All exhibits were admitted without objection. DOHA received the transcript (Tr.) on September 26, 2017.

After the hearing, Applicant's personal representative sought to re-open the record so that she could submit documentation of Applicant's Chapter 13 Bankruptcy payment plan, once approved. This was allowed without objection. In December 2017, Applicant submitted several post-hearing documents, which were marked AE I through AE L and admitted without objection. The record closed on December 15, 2017.¹

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, 2017.² Any changes resulting from the issuance of new AGs did not affect my decision in this case.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.g. His admissions and other comments are incorporated 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 62 years old. He has never married and has no children. He has a high school diploma. In April 2015, Applicant began working as a driver for his current employer, a defense contractor. He submitted a security clearance application (SCA) in May 2015. He disclosed a repossessed auto, and stated he was considering bankruptcy. (GE 1)

Before he was hired for his current position, Applicant spent about 30 years working in the construction industry. On his SCA, he disclosed several periods of unemployment, including from April to November 2006, September to December 2008, and for much of April to October 2009. (GE 1) Applicant testified that, beginning in about 2008, the construction industry was negatively affected by an economic downturn, and his income and employment suffered as a result. (Tr. 67-72; 76-78; AE A)

From October 2009 to April 2015, Applicant worked as a truck driver for a paving company. He made about \$15 an hour. This employment, too, was sporadic, since the work was seasonal. In 2015, he earned about \$31,430. Applicant also experienced medical issues during this period, and he did not have medical insurance until he could

¹ E-mail correspondence regarding post-hearing submissions was marked as Hearing Exhibits (HE) II and III. The Government's discovery letter was marked as HE I.

² Tr. 10-11.

enroll in an insurance plan through the Affordable Care Act. Several of the SOR debts are for credit cards, which he used to pay living expenses. (Tr. 68-79; AE A; GE 5 at 33)

During this period, Applicant often made enough to live on but not enough to pay his bills. He testified that he prioritized some of his bills (mortgage, utilities and health care) over others when he was not able to pay them all. (Tr. 65-76; AE A) Applicant owns his own home, and has lived there since 2001. When he purchased the home, he took out a 15-year mortgage, which is now fully paid. He also took out a home equity loan in about 2007 to help him pay expenses. He owes about \$33,000 on that loan. He testified that he does not live extravagantly and that his debts are due to living expenses, and not large expenditures. (Tr. 70-71, 80; GE 1; GE 5)³

The SOR debts total about \$23,672. They include three credit cards (SOR ¶¶ 1.a, for \$8,130; 1.b, for \$7,223; and 1.c, for \$3,064); the deficiency balance following an auto repossession (SOR ¶ 1.d, for \$2,493); overdue condo fees (SOR ¶ 1.f, for \$2,251); and two medical debts (SOR ¶¶ 1.e, for \$286 and 1.g, for \$315). (Tr. 83-88; GE 3, 4)

On his SCA and in his SOR response, Applicant indicated that he was pursuing bankruptcy. He filed a Chapter 13 bankruptcy petition in June 2017. (GE 1, GE 5) He testified that several circumstances prevented him from filing bankruptcy sooner. In 2015 and 2016, his sister was seriously ill, requiring his attention and some financial assistance. His father also passed away in February 2017. (Tr. 82, 89-90; AE A; AE G)

In his bankruptcy petition, Applicant declared about \$70,000 in liabilities, of which \$33,000 is his home equity loan. All of the SOR debts are declared in the bankruptcy. He declared about \$2,400 in monthly income, and about \$2,100 in monthly expenses, leaving about \$300 left over each month. His largest asset is his home, valued at about \$115,000. During the bankruptcy process, Applicant participated in credit counseling and a personal financial management course, as required. (Tr. 90-91; GE 5)

At the time of the hearing, Applicant had made three monthly payments of \$250 into the bankruptcy plan, which is expected to last for five years, until 2022. (Tr. 88-90; AE A; AE C; AE D, AE F; GE 5) His bankruptcy payment plan was approved in December 2017. He will pay \$250 a month for four months, and then \$270 a month for the remainder of the plan. He verified that he is making payments, and provided documentation from the bankruptcy court setting up automatic transfer of his monthly payments. (AE I, AE J, AE K, AE L) He is also current on paying off his home equity loan. (AE L)

Applicant testified credibly that he is remorseful about getting into financial difficulty, and that he understands the security significance of delinquent debt. (Tr. 102; AE A) He testified that he loves his job and that it is “the greatest job I’ve ever had.” (Tr. 93) He also appreciates the chance he has been given to serve the country. (Tr. 73) He now works full-time, making \$20 an hour, and has a monthly budget allowing him to live

³ For instance, among the assets Applicant declared was a 2002 automobile with 230,000 miles on it. (GE 5 at 16)

within his means. (Tr. 78; AE E; AE F) He hopes that he can continue in the job for the rest of his career. Having finally found steady employment at a good living wage and with good benefits, he believes his finances will improve and that he will stay financially stable and out of debt. (Tr. 73)

Applicant's character witnesses testified about how reliable, hard-working and dedicated he is. They also attested to his good judgment and trustworthiness. His character witnesses included his immediate supervisor, who works with him on a daily basis, a lifelong friend who has known Applicant for 30 years, and a fellow participant in a counseling and support group who has known Applicant in that context for about 10 years. Applicant is close to his family. His sister considers him "steady as a rock" and very dependable. His stepmother, who has known Applicant for more than 20 years, testified that he has been loyal and attentive to her, especially since her husband, Applicant's father, died earlier this year. (Tr. 30-64)

Policies

It is well established that no one has a right to a security clearance.⁴ As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."⁵

The AGs 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 national security eligibility will be resolved in favor of the national security." Under ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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

⁴ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance").

⁵ 484 U.S. at 531.

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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case: ¶¶ 19(a) inability to satisfy debts; and 19(c) a history of not meeting financial obligations. Applicant has a long history of financial instability, which ultimately led him to file for Chapter 13 bankruptcy in June 2017. The above AGs are satisfied.

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;

(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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts resulted from several periods of unemployment and underemployment during which he struggled to make ends meet. At times he used credit cards to pay his living expenses, such as his mortgage, utilities and medical expenses. He owns his own home, and in about 2007, he took out a home equity loan to help make ends meet as well. The downturn in the economy in about 2008 impacted his industry, and Applicant's income suffered, as did his ability to pay his bills, including medical expenses he incurred when he did not have insurance. These were all circumstances beyond his control. Applicant nonetheless did the best he could, given his limited and sporadic income, to pay his debts in a reasonable way. AG ¶ 20(b) therefore applies.

Since he found full-time employment in April 2015 in his current position, Applicant's finances have improved. He filed for Chapter 13 bankruptcy in June 2017, and would have done so earlier but for several unforeseen life circumstances, such as his sister's serious medical condition and his father's death. His finances are now in better shape. He makes a steady living, and is beginning to resolve his debts through bankruptcy. His repayment plan is newly confirmed, so he has not had much chance to establish a steady track record of payments, although he is current. AG ¶ 20(d) therefore has only limited application. His debts are also ongoing, so AG ¶ 20(a) does not fully apply.

However, Applicant's finances are now under control and will continue to improve with time, given the stability of his employment and his increased, and steady income. Since Applicant is in an approved Chapter 13 bankruptcy repayment plan that he can afford, his debts are under control and are being resolved. AG ¶ 20(c) therefore applies.

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(c):

(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 observed Applicant's demeanor during the hearing, and found him to be an honest, credible witness. He was genuinely remorseful about having fallen behind on his debts, and he understands the security significance of his circumstances. I believed his testimony that his current position is the best job he has ever had, and I believe he will endeavor to do well there so he can continue on the path of financial stability. I also credit his character witnesses, from both his personal life and his job, all of whom testified consistently and credibly to Applicant's loyalty, reliability, dependability, and work ethic. Overall, the record evidence leaves me with no 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
Subparagraphs 1.a-1.g:	For Applicant

Conclusion

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

Braden M. Murphy
Administrative Judge