



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case No. 16-03218
)
)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

08/23/2018

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

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

History of the Case

Applicant submitted a security clearance application (SCA) on June 26, 2015. On June 26, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F, financial considerations. Applicant answered (Answer) the SOR on August 24, 2017, and requested a hearing before an administrative judge. The Government was ready to proceed on November 9, 2017, and the case was assigned to me on March 16, 2018. On April 26, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 23, 2018. I convened the hearing as scheduled.

Government's Exhibits (GE) 1 through 5 were admitted, without objection. Applicant testified and Applicant's Exhibits (AE) A through D were admitted, without objection.¹ I received the completed transcript (TR) on June 8, 2018. I held the record open until July 16, 2018, to allow Applicant to submit additional documentation. He timely submitted AE E through AE I, which are admitted without objection.

¹ On October 19, 2017, a discovery package was sent to Applicant. I marked that as Hearing Exhibit (HE) I, but did not admit it into evidence.

Findings of Fact

Applicant is 47 years old and works as an information technology specialist for a defense contractor. He has worked for his employer for approximately two years, and requires a clearance for his employment. He has held a DOD security clearance since approximately 1989. He and his ex-wife separated in 2010, and their divorce was finalized in 2013, after 17 years of marriage. He has two adult children. He received his bachelor's degree in 2009 and his master's degree in June 2016. He honorably retired from the U.S. Air Force in 2010, after 21 years of service. (TR at 9-13)

Applicant attributes his financial issues to his 2013 divorce, loss of employment in July 2013, and the subsequent failure of his business. (TR at 24, 44; AE C) The SOR alleges five debts, totaling \$67,079.

In July 2013, Applicant was laid off by his employer. A month later, Applicant started a transportation business with \$18,000 in savings. He used his personal credit to purchase a \$51,000 truck for the business. The business experienced numerous setbacks due to circumstances beyond his control, which limited his ability to make the monthly payments of \$1,030. From the fall of 2013 until April 2015, when the vehicle was repossessed, Applicant's business generated approximately \$8,000 in total revenue. (TR at 23, 25, 27-31, 66) Following the repossession, Applicant was indebted to Creditor A for the outstanding balance of \$30,468.

After the vehicle was repossessed, Creditor A transferred the debt to Creditor B. In February 2018, Applicant contacted Creditor B and offered, in writing, to settle the debt for \$7,000. (TR at 34-43,) On July 6, 2018, Applicant sent an additional offer to settle the debt. On July 17, 2018, he paid \$10,000 to Creditor B and resolved the debt. (AE F; AE I)

The debt alleged in SOR ¶ 1.b is a duplicate of the judgment alleged in SOR ¶ 1.g. The debt was a joint credit card account of Applicant and his ex-wife. In October 2012, Applicant established payment arrangements and made payments of \$250 until June 2014, totaling \$4,250. (AE G). He was unable to continue to make payments due to a lack of revenue from his business. In May 2018, Applicant established a new payment agreement of \$200 per month, and he has made two payments. (TR at 46-47, 49-52, 73-74; AE G; AE I)

The debts alleged in SOR ¶¶ 1.c and 1.d are both accounts that belonged to his ex-wife. He was unaware of these accounts, but his credit bureau reports reflect that he was an authorized user. He did not make charges to either account. (TR at 52, 74; GE 3 at 4-5; AE B) Applicant disputed the debts alleged in SOR ¶¶ 1.e and 1.h, and they were removed from his credit report. (TR at 55-58, 74-76; AE D). In his Answer, Applicant provided documentation showing the \$2,047 debt alleged in SOR ¶ 1.f was paid in 2014. (TR at 57, 75; AE A)

Applicant resolved additional debts that were not alleged in the SOR. He also worked to prevent his home from going into foreclosure status. (TR at 44-45, 77) Applicant

provided documentation showing his current finances are in good standing; he has no new delinquent debts; he follows a budget; and he has savings. (TR at 67, 70; AE D) Applicant also provided a letter of recommendation from his supervisor reflecting his reputation for integrity, exceptionalism, and professionalism. (AE C) He has never had any security violations. (TR at 60)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 national security eligibility will be resolved in favor of the 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 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 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.²

Applicant's admissions and the documentary evidence establish two disqualifying conditions under AG ¶ 19:

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

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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,

² ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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; and,

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

Applicant experienced personal financial issues related to his employment and divorce, which were circumstances beyond his control. In 2010, he retired after 21 years of military service. Additionally, he and his wife of 17 years separated. In 2013, they divorced and he was laid off from his job. As a result, he took a reasonable and calculated risk to start a business. He had savings and a military pension. The business was not financially successful. Applicant provided proof that he has resolved or is making payments toward his delinquent debts. His actions demonstrate a good-faith effort to repay creditors. Applicant has resolved the debts alleged in the SOR and is able to live with-in his budget. He has no new delinquent debts, demonstrating his circumstances have changed and he is reliable. Mitigation under AG ¶¶ 20(a), 20(b), and 20(d) was established.

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(d):

(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. He successfully disputed two of the SOR debts; two of the debts belong to his ex-wife; he resolved one debt in 2014 and one debt in 2018; and he is making payments toward one debt. I also considered Applicant's favorable character evidence and letter of recommendation.

Applicant met his burden of proof and persuasion. He mitigated the financial considerations security concerns and established his eligibility for a security clearance.

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 to 1.h: For Applicant

Conclusion

It is clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

CAROLINE E. HEINTZELMAN
Administrative Judge