



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



In the matter of:)
)
) ISCR Case No. 17-00245
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: [spouse], Personal Representative

12/20/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On February 27, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) 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) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on April 18, 2017, and requested a hearing before an administrative judge. The case was assigned to me on June 9, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 18, 2017. I convened the hearing as scheduled on November 14, 2017. The Government offered exhibits (GE) 1 through 5. Applicant testified and offer exhibits (AE) A through D. There were no objections to any exhibits, and they were admitted into evidence.² The record was held open until November 28, 2017, to permit the submission of additional documents. None were provided, and the record closed. DOHA received the hearing transcript on November 22, 2017.

Findings of Fact

Applicant did not admit or deny any of the allegations in the SOR. I will consider his nonresponse as a denial to each allegation. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 59 years old. He completed 9th grade. He was married in 1991 and later divorced. He remarried in 1999 and his wife passed away in 2007. He remarried in 2014. He does not have children. He has worked for a federal contractor since April 2012. His work was seasonal and during the winter months he was laid off. In 2015, he was able to change jobs within the company and work all year. He was employed from July 2011 to June 2012 for the county, and did maintenance work for a local company from June 2010 to June 2012. He worked for a car manufacturer from February 2005 to May 2010. Applicant's wife is employed.³

Applicant was overwhelmed with bills when his second wife was diagnosed with cancer. He did not have medical insurance, and he was unable to pay all of his bills. He had his debts discharged in Chapter 7 bankruptcy in 2004. Most of the debts discharged were consumer debts.⁴

When Applicant's job was seasonal, he would be laid off during the winter months and it was difficult to meet his financial obligations because he did not earn sufficient income. In June 2016, he sought assistance through a financial consultant company, which was supposed to help him settle his debts. He provided copies of payments he made to the company in March 2017, totaling \$4,600. He testified that the company helped him settle some debts. Credit reports from November 2105 and December 2016 and bankruptcy documents substantiate the debts alleged in the SOR.⁵

² Hearing Exhibit I is the Government's discovery letter.

³ Tr. 20-26; GE 1.

⁴ Tr. 27-33; GE 5. I have not considered any derogatory information that was not alleged in the SOR for disqualifying purposes. I may consider it when analyzing Applicant's credibility, in applying the mitigating conditions and in a whole-person analysis.

⁵ Tr. 33-35, 57; GE 1, 3, 4, 5; AE A, B, C, D.

In June 2017, Applicant filed Chapter 13 bankruptcy. His attorney provided a letter to the Government along with copies of Schedules D, E, and F of his bankruptcy. Applicant's Chapter 13 plan requires him to pay \$388 for the first six months and \$494 for the next 54 months. Applicant has the amount automatically deducted from his pay. His first payment started in July 2017 and he has made consistent payments since then. All of the debts in the SOR are included in his payment plan, as are other unsecured debts. He testified that with his wife's and his combined income, he is able to make the payments on the Chapter 13 plan and also meet their other monthly expenses. He testified that he is living within his means.⁶

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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, 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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

⁶ Tr. 50-55, 58-66; GE 4, 5; AE D.

classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern relating to the guideline 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has had financial problems for many years and accumulated debts that became delinquent and were unresolved because he was unable to do so. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(c) the individual has received or is receiving financial 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 has numerous delinquent debts. He attributed his financial problems to seasonal unemployment and inconsistent income. In 2015, he moved to a new job and now works year round. In 2016, he worked with a financial consultant to help settle his delinquent debts. In 2017, he filed Chapter 13 bankruptcy and has been participating in a payment plan since July 2017. Applicant's seasonal unemployment was somewhat beyond his control, although he was aware annually it would occur. He began to address his delinquent debts through a financial consultant company in mid-2016 and filed Chapter 13 bankruptcy in June 2017, and has made payments since July 2017. I find AG ¶ 20(b) partially applies.

Applicant worked with a financial consultant beginning in June 2016 before receiving the SOR and made payments to help settle some delinquent debts. He subsequently filed Chapter 13 bankruptcy and has been making payments since July 2017. In order to file bankruptcy, mandatory financial counseling is required. Applicant's consistent payments for the past months show that there are clear indications that his financial problems are coming under control. AG ¶ 20(c) applies. Paying his creditors through Chapter 13 bankruptcy demonstrates that he has not abandoned his responsibility to pay his overdue creditors. AG ¶ 20(d) has some application.

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 the 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. Some of the factors in AG ¶ 2(d) were addressed under that guidelines, but some warrant additional comment.

Applicant is 59 years old. He and his wife are both employed. He does not have a stellar financial record, but he made an earnest effort to begin resolving his delinquent debts when he hired a financial consultant company in June 2016, before receiving the SOR. All of the debts in the SOR are included in Applicant's Chapter 13 bankruptcy payment plan. His payments are automatically deducted from his pay. He has made consistent payments since July 2017. Applicant understands the importance of completing his Chapter 13 payment plan and the impact it could potentially have on his job, if he fails to do so. Although there are some questions about his past commitment to responsible financial management, I believe he has changed and is committed to resolving delinquent debts. The record evidence does not leave me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations.

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.m:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge