



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-00625

Appearances

For Government: Aubrey M. DeAngelis, Esq., Department Counsel
For Applicant: *Pro se*

05/10/2018

Decision

Curry, Marc E., Administrative Judge:

Considering the cause of Applicant's financial problems, and the steps he has taken to resolve them, I conclude he has mitigated the financial considerations security concerns. Clearance is granted.

Statement of the Case

On March 25, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility for him. The DOD CAF took the action 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 for Determining Eligibility for Access to Classified Information* effective within the DOD on September 1, 2006.

On May 18, 2017, Applicant answered the SOR allegations, admitting the allegations and requesting a decision based on the written record rather than a hearing. On

August 15, 2017, Department Counsel prepared a File of Relevant Material (FORM). Applicant filed a reply on September 8, 2017. The case was assigned to me on December 18, 2017. On March 9, 2018, I re-opened the record to enable Applicant to submit additional exhibits. (Item 9) Within the time I allotted, Applicant submitted three additional items, marked and incorporated into the files as Items 10 through 12. Department Counsel, upon reviewing the file, submitted an additional exhibit that I marked and incorporated into the record as Item 13.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.

Findings of Fact

Applicant is a 56-year-old married man with two adult children. He has a high school education and has earned a security information certification in April 2009. He has been working for a defense contractor in his current position since 2014. (Item 4) He is "a key leader" on the job. (Item 3 at 7)

Applicant failed to file his federal or state income tax returns from tax years 2013 through 2015 on time. In addition, as of the date of the SOR, Applicant had a home equity loan with a balance of \$77,247, that was \$8,834 past due. Applicant's financial problems corresponded with serious health problems. Specifically, in 2011, he began experiencing severe intestinal blockages. (Response) After repeated trips to the doctor and multiple hospital stays, he was diagnosed with cancer in October 2014, requiring surgery and the removal of four feet of his small intestine. While struggling with his illness, he frequently missed work without compensation.

In early 2015, his variable, monthly home mortgage payment increased by nearly \$900. (Item 8 at 2-3) Also, the mortgage payments on his home equity line of credit increased by \$600 during the period he was struggling with his illness. (Item, 8 at 2) Consequently, he fell behind on both mortgage payments. By 2016, the primary mortgage was in foreclosure, and the home equity account was delinquent by approximately \$8,000. While Applicant was struggling with his illness, he also neglected to file his federal and state income tax returns for tax years 2013 through 2015.

By June 2016, Applicant had recovered from his illness and had begun working to resolve his financial problems. (Item 8 at 3) That month, he retained an attorney who successfully negotiated a modification of his primary loan. (Item 8 at 3; Item 10) His primary mortgage loan is no longer in delinquent status. Applicant's attorney is currently helping him resolve the delinquent secondary mortgage.

By May 2017, Applicant had filed all of his income tax returns through tax year 2016. He received refunds for tax years 2013, 2014, and 2016 totalling approximately \$10,000. (Item 3 at 1-2, 4) He owed \$100 for tax year 2015 and paid it with the return. (Item 3 at 3) As of December 20, 2017, Applicant had filed his delinquent state income tax returns. He owes \$5,892, and he has arranged a payment plan under which he is to make \$125 monthly payments, beginning December 26, 2017, with the last payment, totaling \$4,792, scheduled for December 26, 2018. (Item 11)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). These factors are as follows:

(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.

Analysis

Guideline F, Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

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. . . .

Applicant's delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(f), "failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay Federal, state or local income taxes, as required."

The following mitigating conditions are potentially applicable:

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 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;

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(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant began experiencing financial problems after becoming seriously ill in 2011. After Applicant recovered, he retained an attorney who obtained a modification of his primary mortgage loan and began working to resolve the home equity line of credit loan. Currently, the home is no longer in foreclosure, the primary mortgage loan has been modified, and it is no longer delinquent. As for the second mortgage, Applicant's attorney is continuing to work with the creditor to resolve it.

Applicant has filed his delinquent federal income tax returns, paying the debt for 2015, the only tax year that he owed money. He has filed his state income tax returns and has arranged a payment plan to address the delinquency. AG ¶¶ 20(b) 20(d), and 20(g)

apply. Although Applicant has retained an attorney, there is no record evidence that the attorney is counseling him. AG ¶ 20(c) does not apply.

Whole-Person Concept

Applicant's failure to file his taxes and keep up with his home equity line of credit account corresponded with the years that he was struggling to recover from intestinal cancer. Since recovering, he has filed all of his taxes, paying the nominal federal income tax delinquency, and developed a payment plan for the state income tax delinquency. As for the home equity line of credit, he retained an attorney to help him resolve it.

Applicant's efforts to resolve the state income tax delinquency are recent, having just occurred after the SOR's issuance. His home equity line of credit remains delinquent, and there is no record evidence of what progress, if any, his attorney has made toward settling it. Nevertheless, given the circumstances surrounding the incurrence of the debt, and Applicant's good character, as noted by his supervisor, his steps taken thus far constitute sufficient presence of rehabilitation to persuade me that the likelihood of recurrence of his financial problems is minimal, and that he will resolve the remaining debts as planned. I conclude that Applicant has mitigated the security concerns.

Formal Findings

Formal findings for 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

Conclusion

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

Marc E. Curry
Administrative Judge