



Applicant for Security Clearance

Appearances

For Government: Allison Marie, Esquire, Department Counsel
For Applicant: Jason Perry, Esquire

05/21/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On April 11, 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 AGs 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 May 11, 2017, and requested a hearing before an administrative judge. The case was assigned to me on December 14, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 24, 2018. I convened the hearing as scheduled on March 22, 2018. The Government offered exhibits (GE) 1 through 7. Applicant testified and offered Applicant Exhibits (AE) A through M. There were no objections to any exhibits offered, and all were admitted into evidence. DOHA received the hearing transcript on March 30, 2018.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.c, 1.g, 1.i through 1.m, and 1.o through 1.s. He denied the allegations in ¶¶ 1.d through 1.f, 1.h and 1.n. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 44 years old. He graduated from college in 1997. He earned credits toward a master's degree, but did not complete it. He married in 2004. He has a 23-year-old stepdaughter and two children ages 21 and 18 years old. He has worked for the same federal contractor since 1997 and has held a security clearance since 2007 without incident.²

Applicant's wife had a serious gambling problem that began in 2006. She was leaving work during the day and gambling. Applicant became aware of the severity of the problem when she was arrested in November 2007 for grand theft after she was caught stealing from her employer to accommodate her addiction. His wife was responsible for handling their finances before this time. Applicant then changed his accounts, so she did not have access. She was arrested a second time in July 2008 for organized fraud. She was convicted and incarcerated in 2008 for felony grand theft and organized fraud. She is on probation for 30 years and required to pay restitution.³

Applicant's wife participated in treatment for her depression and gambling problems from 2009 to 2012. Her therapist's 2012 letter stated that her conditions were in remission with no reported gambling since they began therapy in 2009. She was released from therapy in April 2012. Applicant stated that the family monitors his wife's depression and signs for relapse. His wife is on medication for anxiety.⁴

The debts alleged in SOR ¶¶ 1.d (\$45,000-IRS) and 1.h (\$650,000) are the sole responsibility of Applicant's wife. The debt to the IRS is related to her gambling. Documents confirm that the correct amount owed is \$4,793. The debt in SOR ¶ 1.h is for restitution to the company she stole from, which is approximately \$150,000, and the judgment in a civil suit is the remainder of the amount alleged. The loss of his wife's

² Tr. 19-24.

³ Tr. 62-69.

⁴ Tr. 69-71, 77-82; AE G.

income at the time (approximately \$40,000) and her legal fees, which were over \$30,000, had a financial impact on Applicant and his family. In 2015, his wife started two modest home businesses, which pay her monthly restitution and help with household expenses. She is current on her payments.⁵

In 2013, Applicant self-reported to his facilities security officer his financial delinquencies. At the time, he was attempting to qualify for a program to avoid the foreclosure of his home. He credibly testified that he had issues with the mortgage company because it had transferred his loan to a different mortgage company, and his payments increased. He did not agree to the changes. He repeatedly “got a runaround” and could not get a direct answer from the mortgage company to his inquiries.⁶ He stopped making the payments because of the mortgage company’s unauthorized increases. He admitted he should have continued to make mortgage payments. He attempted to get the mortgage modified, but the mortgage company chose to foreclose on the property. A class action lawsuit was brought against the original mortgage company, and Applicant received a settlement of \$826. He testified he never understood the full extent of the lawsuit. He was advised he had no option to keep the house from foreclosure, unless he paid the deficiency.⁷

Applicant sought bankruptcy protection to prevent the foreclosure and address his delinquent bills. He and his wife filed Chapter 13 bankruptcy in February 2017. Included in the bankruptcy payment plan is his delinquent mortgage, his wife’s IRS debt, civil judgment, and all of the debts alleged in the SOR. Also included in the bankruptcy plan were credit cards, medical, and legal debts. This legal proceeding allowed him to save his house and pay some debts. The Chapter 13 bankruptcy plan was confirmed in March 2018. He explained the delay in confirmation was due to a determination of the value of a vehicle.⁸

Before the plan was approved, Applicant made five payments of \$2,873 from March 2017 to June 2017, and in August 2017. He made payments totaling \$4,224 in October 2017; \$4,536 in December 2017; \$3,136 in January 2018; and \$2,168 in February 2018.⁹ He explained he missed some payments because the amounts changed, but he made them up. He testified that in December 2017 he received a notice from the bankruptcy trustee that he failed to make a payment thereby dismissing the Chapter 13. He credibly testified that his bank account was hacked. The hackers would withdraw small amounts of money so the holder would not notice. By the time he became aware, the hackers had stolen several thousands of dollars. He has been working with the bank to resolve the issue, but has been unable to recover all of his

⁵ Tr. 56-60, 62-63; AE A, C, F, J.

⁶ Tr. 50.

⁷ Tr. 48-56, 83-87; AE A, E.

⁸ Tr. 24-27.

⁹ GE 4; AE A, B, C.

losses. The court reinstated the bankruptcy petition, and he was able to resume his bankruptcy payments. He admitted there were a couple of months that he had problems paying, but has made payments over the past 12 months.¹⁰

The March 2018 Chapter 13 payment plan requires Applicant to make a payment of \$2,168 in March 2018 and then payments of \$3,143 from April 2018 until the plan is completed. Applicant recently received a pay raise and is confident he can pay the monthly amount.¹¹

The home equity loan alleged in SOR ¶ 1.b is a secured. An Agreed Order was filed in September 2017 to determine the status of the loan. The lien associated with this loan will be “stripped” when the Chapter 13 payment plan is completed. The value of the house is less than the mortgage. The mortgage (SOR ¶ 1.c) is included in the bankruptcy. Applicant pays \$1,145 monthly for his mortgage and \$522 toward the arrearage. As of the date of the hearing, 12 payments had been made for the mortgage through the trustee of the Chapter 13 plan, and the payments are up-to-date. Applicant will continue to pay the arrearages through the bankruptcy plan. After all of the secured debt is paid, the unsecured debt may be paid. Applicant believed it was unlikely that the equity loan would be paid, but it will be discharged after the terms of the bankruptcy are completed.¹²

Applicant's wife's IRS tax debt in SOR ¶ 1.d is being paid through the Chapter 13 plan. Applicant disputed the debt in SOR ¶ 1.e through a credit bureau, believing it is a fraudulent credit card.¹³

Applicant admitted that because of the circumstances regarding his wife's legal and addiction problems, some of their bills were not being paid. He was overwhelmed caring for three children, addressing his wife's issues, and working. He realized he had to make changes. He is now completely responsible for all of the family's finances. Staying current with his Chapter 13 payment plan has allowed him to make better financial decisions and forces him and his family to live within their means. He accepted full responsibility for his actions. His family has weekly budget meetings. All of their debts are written down. He monitors all of the financial accounts. They budget for everything they need. His wife maintains a separate account for her business. Applicant monitors all of their accounts.¹⁴

¹⁰ Tr. 27-43, 92-100; GE 4.

¹¹ Tr. 37-39; AE C.

¹² Tr. 44-48, 53-56; AE A, B, C, D.

¹³ Tr. 60-62, 71-72, 74; AE B.

¹⁴ Tr. 72-77.

Applicant provided character letters that describe him as dependable, reliable, conscientious, honest, hard-working, and trustworthy. He consistently received high performance evaluations. His supervisors stated he has excellent technical skills.¹⁵

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 access to classified information will be resolved in favor of 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 not drawn 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. Under Directive ¶ E3.1.15, 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 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.

¹⁵ AE H, I.

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 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹⁶

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and 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.

¹⁶ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant had numerous delinquent debts that began accumulating in approximately 2008, which he was unable or unwilling to resolve. The above disqualifying conditions apply.

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 counseling for the problem from a legitimate and credible source, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control;

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

(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.

Applicant's financial difficulties are attributed to his wife's addiction and criminal problems. The loss of her income and other resulting financial circumstances were beyond his control. Applicant also experienced issues with his mortgage company raising his payments. That issue was beyond his control, but his failure to pay his mortgage during this time was within his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant attempted to address his mortgage payments with the mortgage company. He was repeatedly frustrated by its failure to be responsive to his inquiries. The mortgage company reached a settlement in a class action law suit. Applicant is addressing his debts through a Chapter 13 bankruptcy. He made payments to the trustee before a plan was confirmed. All of the alleged debts are included in the plan. He has taken responsibility for handling all the family's finances. They have budget meetings. His wife completed therapy for her gambling addiction. The family pays attention to her to ensure she does not relapse. I find there is sufficient evidence to conclude that he has acted responsibly, and his behavior is unlikely to recur. His behavior does not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(b) applies.

There is evidence Applicant received financial counseling through the mandatory bankruptcy requirement. He began addressing his financial problems prior to receiving

the SOR. He is resolving his delinquent debts through the Chapter 13 bankruptcy plan. He adheres to a budget and closely monitors family spending. I find that his financial problems are under control. AG ¶ 20(c) applies.

Applicant is addressing his delinquent debts through a bankruptcy payment plan. This is a legal means to address financial concerns. Applicant began making payments before his bankruptcy plan was approved. He has not ignored his debts. Although it is unlikely that all of his creditors will be paid, the evidence supports that he is making a good-faith effort to repay many of the creditors through the plan. AG ¶ 20(d) applies.

Applicant denied some of the alleged debts, but subsequently included them in his bankruptcy plan. AG ¶ 20(e) does not apply.

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

Applicant is 44 years old. His financial problem arose due to his wife's gambling addiction, conviction and incarceration. The loss of her income and cost of her legal bills created a significant financial burden. He advised his facilities security officer of his financial problems. He eventually filed Chapter 13 bankruptcy. He has an approved plan and made payments on it prior to its approval. Under the circumstances in this case, I believe filing the bankruptcy was a responsible method to resolve the numerous delinquent debts and establish a track record of financial stability. His conduct no longer raises questions about his judgment, reliability, and trustworthiness. Overall, the record

evidence does not leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude he 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
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Subparagraphs 1.a-1.s:	For Applicant
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Conclusion

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

Carol G. Ricciardello
Administrative Judge