



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



In the matter of:)
)
) ISCR Case No. 17-01665¹
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

05/24/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On June 6, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on June 29, 2017, and requested a hearing before an administrative judge.

The case was assigned to me on November 9, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 18, 2017, scheduling the hearing for February 1, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence. Applicant testified and Applicant's Exhibits (AE) A through C were admitted in evidence. The record was

¹ The Statement of Reasons misidentified this as an ADP (public trust position) case. Department Counsel and Applicant verified it is an ISCR (security clearance) case. The Statement of Reasons has been amended without objection.

held open for Applicant to submit additional information. He submitted documents that I have marked AE D through F and admitted without objection. DOHA received the hearing transcript (Tr.) on February 9, 2018.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer or a predecessor contractor since September 2016. He has a bachelor's degree. He is married with a child and a stepchild.²

Applicant owned a limited liability company (LLC) that manufactured millions of products for other companies. The products were then sold to consumers. The products used a technology that was common in most households and businesses. Due to technological advances, the products are no longer used by most consumers. Applicant's company lost most of its business, and it was no longer viable to operate. The company became unprofitable and then stopped doing business completely in 2016.³

Applicant and his company leased a piece of equipment to manufacture the products. The equipment was valued at about \$340,000, and the lease was \$10,000 per month. The leasing company obtained a \$311,928 judgment against Applicant and his company in March 2016. The equipment is in the hands of a third party who is leasing it from the leasing company.⁴

Applicant was unemployed after his business closed for about five months until he obtained a job with a defense contractor in September 2016. The SOR alleges the \$311,928 judgment and two delinquent debts totaling \$3,284. The two debts are listed on multiple credit reports. The judgment is not reported on a credit report. Applicant disclosed the defaulted lease and other debts in his September 2016 Questionnaire for National Security Positions (SF 86).⁵

Applicant paid several debts that were not alleged in the SOR. He had questions about the legitimacy of the two delinquent debts alleged in the SOR. After he started working, he had the means of paying them, but when he contacted the creditors, he was informed the accounts had been closed and written off. These are the only two accounts with balances reflected on the three credit reports in evidence.⁶

² Tr. at 12-13; GE 1.

³ Tr. at 7-10; Applicant's response to SOR.

⁴ Tr. at 7-10, 14-18; Applicant's response to SOR; GE 1.

⁵ Tr. at 14; Applicant's response to SOR; GE 1-5.

⁶ Tr. at 11, 19; Applicant's response to SOR; GE 3-5; AE A-B.

Applicant decided that bankruptcy was his only feasible option for addressing the judgment. He filed a Chapter 7 bankruptcy case in January 2018. His dischargeable debts were discharged in April 2018. He received financial counseling as a requirement of the bankruptcy. His current finances are in order.⁷

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

⁷ Tr. at 11-12, 15, 19-21; AE C-F.

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant had financial problems related to his failed business. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the 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, a death, divorce or separation,

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

(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.

Applicant had a successful business that sold millions of products until the technology that was the basis of the business became obsolete. His response was to close the business and work for a defense contractor. He paid several debts that were not alleged in the SOR. He decided that bankruptcy was his only feasible option for addressing the \$311,928 judgment. His dischargeable debts were discharged in April 2018. Of note is that the equipment that was the basis of the judgment is in the hands of a third party who is leasing it from the leasing company. He received financial counseling as a requirement of the bankruptcy. His current finances are in order.

I find that Applicant's financial difficulties were the result of conditions that were largely beyond his control, and that he acted responsibly under the circumstances by resolving them through bankruptcy. They do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), and 20(c) are applicable.

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.

Overall, the record evidence leaves me without questions or doubts about 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
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Subparagraphs 1.a-1.c:	For Applicant
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Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge