



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



In the matter of:

ISCR Case No. 17-00226

Applicant for Security Clearance

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

01/16/2018

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the security concerns arising from delinquent debts and unpaid taxes. Based upon evaluation of the testimony, pleadings and exhibits, national security eligibility for access to classified information is granted.

History of Case

On August 4, 2015, Applicant submitted a security clearance application (SF 86). On February 16, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging 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 effective within the DoD after 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 in writing on March 4, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on April 24, 2017. DOHA issued a Notice of Hearing on July 7, 2017, setting the hearing for August 2, 2017. Department Counsel offered Government Exhibits (GE) 1 through 10 into evidence. Applicant testified, and offered Exhibits (AE) A through F into evidence. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on August 10, 2017. The record remained open until September 15, 2017, to permit submission of additional evidence. Applicant timely submitted AE G, which included nine pages, and was admitted without objection.

Findings of Fact

Applicant is 52 years old. He has been married for 16 years. He has a 20-year-old daughter from another relationship. He enlisted in the Marines in 1986 and served on active duty until 1990. He then enlisted in the Navy Reserve in 1993 and was honorably discharged in 2010 as an E-5. (Tr. 22-24) He held a secret and a Top secret security clearance while serving. (Tr. 8-9) He completed high school and has earned some college credits. He worked for a manufacturing company from 2001 to 2008, when he was laid off along with other employees. He worked for a federal contractor from 2011 to 2014. He has worked for his current employer since 2014. His wife is employed. (Tr. 24-26)

Applicant attributed his financial and tax issues to the period of time he was unemployed from December 2008, when he lost his position, until August 2011, when he started a full-time position with another federal contractor. During that period, he received seven months of severance pay and then state unemployment benefits to July 2013. His wife was not earning enough money to pay all of their expenses. (Tr. 27-28, 33)

Applicant filed his 2013 and 2014 federal tax returns in June 2016. He filed his 2012 federal tax return late.² (Tr. 41-42; AE G) He timely filed his 2015 and 2016 tax returns. (Tr. 42)

Applicant earns \$17.50 an hour. He and his wife each earn about \$50,000 annually. He has health insurance. They do not have a written budget. He said they discuss and then pay their bills together. All of their ongoing expenses are current. He has not taken credit or financial counseling. (Tr. 29-32)

Based on credit bureau reports (CBR) from April 2015, August 2016, and August 2017, the SOR contained 10 allegations: a 2003 Chapter 7 bankruptcy; three delinquent debts; two delinquent student loans; and four delinquent federal and state income tax debts for years 2012 through 2014. The delinquent debts and unpaid taxes totaled about \$17,700 and accumulated between 2010 and 2014. (GE 4, GE 5, GE 10.) He disclosed

² The SOR did not allege that Appellant failed to timely file his federal tax returns for 2012, 2013, or 2014. That derogatory information will not be considered for disqualifying purposes. It may be considered in evaluating Applicant's credibility, in applying the mitigating conditions, and in the analysis of the whole person-concept.

delinquent credit card debts and his unpaid taxes in his 2015 SCA. (GE 1) The status of each allegation is as follows:

SOR ¶ 1.a alleged that in December 2003, Applicant discharged \$77,338 of delinquent debts through Chapter 7 bankruptcy. The majority of that debt consisted of unpaid credit cards and an automobile loan. (GE 8) Applicant admitted that he accumulated it as a consequence of being financially irresponsible and spending more money than he earned. (Tr. 32-33)

The \$5,321 credit card debt in SOR ¶ 1.b was charged off in 2011. Applicant's last payment was in 2010. He subsequently made four \$100 payments on the debt between April and July 2017, after receiving the SOR. The creditor then told him to stop the payments because the government prohibited a creditor from collecting a charged-off account. (Tr. 34-38; AE G) It is resolved.

The \$3,724 and \$3,374 delinquent student loans in SOR ¶¶ 1.c and 1.d totaled \$7,098, and are being resolved. As of August 2017, the balance for the two loans is about \$2,600. For a period of time, Appellant's salary was garnished to repay these loans. After changing employers in May 2017, he voluntarily began making monthly payments of \$400 on the loans. He intends to continue making the payments until the loans are paid. (Tr. 38-40; GE 10) They are being resolved.

Applicant settled the \$1,075 auto loan in SOR ¶ 1.e for \$750. He paid it in March 2017. (Tr. 41; AE B)

Applicant settled the \$854 credit card debt in SOR ¶ 1.f for \$800. He paid it in March 2017. (Tr. 40; AE C)

Applicant owed a total of \$3,351 for unpaid federal taxes for years 2012, 2013, and 2014, as alleged in SOR ¶¶ 1.g, 1.h, and 1.i. In March 2017, he negotiated a payment plan with the IRS. He made his first payment of \$150 in April 2017. As of August 2017, the balance was under \$2,800. (Tr. 41-42; AE A, AE D) Post-hearing, Applicant submitted documents from the IRS, which indicate his 2013 and 2014 tax debts are resolved. (AE G)

Applicant said he failed to timely file and pay state income taxes for 2013 and 2014, as alleged in SOR ¶ 1.j. He produced a document from the state indicating that those matters are resolved. He said he does not owe money for any tax year. (Tr. 44-46, 49; AE D)

Applicant said he has changed since 2003 when he filed the Chapter 7 bankruptcy. He said he would not have had financial problems if he had not lost his job in 2008. He emphasized his 20-year military service, during which time he held a security clearance. (Tr. 51) He submitted a Letter of Commendation from 2009 that he received for exceptional performance of his duty. (AE G)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes conditions that could raise security concerns. Three may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of financial difficulties, which includes a 2003 Chapter 7 bankruptcy, and debts that became delinquent between 2010 and 2014, as documented by his admissions and the CBRs. He has been unable or unwilling to fully satisfy or resolve those debts until early 2017. These facts established prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties. The following may potentially apply:

- (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, or 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;

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

(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 admitted that he filed Chapter 7 bankruptcy in 2003 as a result of mismanaging his finances. That was not a circumstance beyond his control. However, his subsequent financial difficulties, beginning in 2010, related to a long period of unemployment, which may have been beyond his control. There is insufficient evidence documenting that he acted responsibly under those circumstances, which is necessary to establish full mitigation. AG ¶ 20(b) partially applies.

Applicant did not provide evidence that he participated in credit or financial counseling; however, he presented evidence that he has resolved or is resolving the financial delinquencies and they coming under control. He established limited mitigation under AG ¶ 20(c). He established some mitigation under AG ¶ 20(d), as he is making payments on two student loans, paid two debts, and attempted to pay an old credit card debt. He resolved his 2013 and 2014 federal taxes and is in compliance with an IRS payment plan to resolve his 2012 federal taxes. All state taxes are also resolved. The evidence establishes some mitigation under AG ¶ 20(g).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature individual who honorably served in the military for 20 years. He took responsibility for previously mismanaging his finances, which resulted in a Chapter 7 bankruptcy and the discharge of a significant amount of debt in 2003. Between 2010 and 2014, he again encountered financial difficulties, which resulted from a long period of unemployment. Although he seemingly did not begin to address those difficulties until after receiving the SOR, at this point, he has satisfactorily resolved or is resolving the delinquent debts and unpaid taxes. During the hearing, he displayed candor and a commitment to financial stability. I have no doubt that he will continue to make good-faith efforts to resolve his student loans and 2012 federal taxes. He is aware that additional financial delinquencies could jeopardize his security clearance and employment. The potential for pressure, exploitation, or duress is diminished. Overall, he has successfully met his burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
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Subparagraphs 1.a through 1.j:	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 interests of national security to grant Applicant access to classified information. National security eligibility is granted.

SHARI DAM
Administrative Judge