



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



In the matter of:)
)
) ISCR Case No. 17-03439
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

09/26/2018

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 December 29, 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 January 27, 2018, and requested a hearing before an administrative judge.

The case was assigned to another administrative judge on April 26, 2018, and reassigned to me on May 7, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 8, 2018, scheduling the hearing for May 17, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through E, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted

documents that I have marked AE F through M and admitted without objection. DOHA received the hearing transcript (Tr.) on June 6, 2018.

Findings of Fact

Applicant is a 57-year-old employee of a defense contractor. He was born in Afghanistan. His family immigrated to the United States as refugees in 1985. He attended college in Afghanistan and the United States. He is married with three minor children.¹

Applicant was unemployed for about ten months in 2014 and 2015 after he was laid off from a job he had held for nine years. He borrowed \$78,000 from his siblings and applied for a franchise with a well-known retail chain. That application was denied, but he was able to obtain a franchise with a much smaller, less established retail chain. He opened the retail establishment in 2015, but it was ultimately unsuccessful, and he closed the business after about seven months. He was unable to pay all the bills and debts he accrued while he was unemployed and during his unsuccessful business venture.²

The SOR alleges past-due first and second mortgage loans; \$78,000 in loans to his siblings; and 13 delinquent debts totaling about \$84,000. Applicant admitted owing all the debts.

Applicant contracted with a company in January 2016 to negotiate and settle his debts. He enrolled 17 debts totaling \$103,480 in the company's debt settlement program. The program called for him to pay \$1,455 per month into an escrow account. The company would use the accumulated funds to settle his debts. Applicant paid \$1,455 each month from February 2016 through July 2016. The total amount paid was about \$8,730. The company settled a \$10,919 debt for \$4,000. It is not clear from the documentation whether the settlement amount was paid. The settled debt is not alleged in the SOR, and it is not listed on the credit reports in evidence.³

Applicant became ill, had to have an organ removed, and was twice hospitalized. His wife also became ill and was hospitalized. He was unable to maintain the payments to the debt settlement program. He was also concerned about the amount of fees the company was charging. He felt his best chance of recovering financially and paying his debts was to work in Afghanistan as a linguist for a defense contractor. His sister advised him not to go to Afghanistan and that she would forgive the loan to her, but he disregarded her advice. He has worked in Afghanistan since April 2017.⁴

¹ Tr. at 29, 76-77; GE 1-3.

² Tr. at 28-30, 43-46; Applicant's response to SOR; GE 1, 3.

³ Tr. at 50-52; GE 2-5; AE F-I.

⁴ Tr. at 28-32, 37-38, 47-49, 60, 66, 71; Applicant's response to SOR.

Applicant contracted with a different company in April 2017 to dispute items from his credit report and assist him in settling his debts. He agreed to pay the company \$663 per month for 36 months. He paid the company \$896 in May 2017 and \$663 each month thereafter. As of April 2018, he had paid the company \$8,192.⁵ The contract further stated:

Should any of the enrolled debts remain after the program is finished, [Company] will negotiate and arrange a settlement directly between the client and collector. Even though [Company] will waive all fees associated with the settlement, client will still have to pay the collections firm directly for the settlement.⁶

Applicant and his family moved to a state with a lower cost of living. He was able to obtain a mortgage loan modification for the house in the state from which he moved. His brother is living in the mortgaged house and paying Applicant sufficient rent to cover the mortgage loan payments. Applicant is current on the modified mortgage loan, and it is in good standing. The status of the second mortgage loan is less clear. He stated that the creditor charged off the second loan when the first loan was modified. He attempted to contact the creditor to resume payments, but he was told it was transferred. He stated that he is willing to resume payments if he can locate who to pay. The house has appreciated in value to an amount that is more than the two mortgage loans. Applicant is considering selling the house, which will pay off both mortgage loans.⁷

Applicant stated that his family is living frugally because he wants to pay his debts. His salary will increase if he receives a security clearance. His siblings are willing to wait to be repaid. He credibly testified that he intends to resolve all his debts.⁸

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.

⁵ Tr. at 54-57, 65; Applicant's response to SOR; AE A, D, F, J-M.

⁶ AE L.

⁷ Tr. at 29, 32-34, 54; Applicant's response to SOR; AE B.

⁸ Tr. at 66-73, 78; Applicant's response to SOR; AE C.

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 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 has a history of financial problems, including unpaid debts. 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
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant was unemployed for about ten months in 2014 and 2015 after he was laid off from a job he had held for nine years. He had a failed business venture. He and his wife were both hospitalized, and he lost an organ. Those conditions were largely beyond his control.

Applicant has twice sought assistance in resolving his debts. He paid one company \$8,730 before his health problems required him to withdraw from the debt settlement program. He disregarded his sister's advice and went to Afghanistan as a linguist because he felt it was his best chance of recovering financially and paying his debts. At about the same time he retained another company. As of April 2018, he had paid the company \$8,192. He also brought his mortgage loan current. He credibly testified that he intends to pay his debts.

Applicant may want to look at how much of his payments are actually going to pay his debts. Nonetheless, I find that he acted responsibly under the circumstances and in good faith. He has a plan to resolve his financial problems, and he took

significant action to implement that plan. His financial problems do not cast doubt on his current reliability, trustworthiness, and good judgment. It may take time, but I am convinced that he will eventually resolve his financial problems.⁹ The above mitigating conditions 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. I also considered Applicant's work as a linguist in Afghanistan.

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
Subparagraphs 1.a-1.p:	For Applicant

⁹ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009) and ISCR Case No. 09-08462 at 4 (App. Bd. May. 31, 2011): "Depending on the facts of a given case, the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern."

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