



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



In the matter of:)
)
) ISCR Case No. 17-03617
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: Kenneth M. Roberts, Esq.

10/24/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 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 November 27, 2017, and requested a hearing before an administrative judge.

The case was assigned to me on January 10, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 11, 2018, scheduling the hearing for February 1, 2018. The hearing was continued at Applicant's request. The hearing convened as rescheduled on July 10, 2018. Government Exhibits (GE) 1 through 9 were admitted in evidence without objection. Applicant testified, called three witnesses, and submitted Applicant's Exhibits (AE) A through H, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted AE K through N, which were admitted without objection.

Applicant also submitted AE I and J. Those documents are hearing briefs and have been remarked as Hearings Exhibits (HE) I and II.

Findings of Fact

Applicant is a 60-year-old employee of a defense contractor. He has worked for his current employer or a predecessor contractor since 1999. He served on active duty in the U.S. military from 1977 until he retired in 1997. He has a bachelor's degree, which was awarded in 2005. He is married with two adult stepchildren.¹

Applicant has a history of financial problems, which include four bankruptcy cases. Applicant and his wife filed a Chapter 7 bankruptcy case in 1991 after his wife lost her job. Their debts were discharged the same year.²

Applicant and his wife recovered financially, but she lost her job again and became disabled. It took an extended period before she received disability payments. She has had eight surgeries on her foot. Applicant also indicated that his wife "liked to go shopping." They filed a Chapter 13 bankruptcy case in 2002. The case was dismissed in June 2004, but another Chapter 13 bankruptcy case was filed in July 2004. Under Schedule D, Creditors Holding Secured Claims, the petition listed \$224,152 in secured claims, which included a mortgage loan. Under Schedule E, Creditors Holding Unsecured Priority Claims, the petition listed \$722 owed to the IRS for 2001 taxes. The petition listed debts totaling \$75,811 under Schedule F, Creditors Holding Unsecured Nonpriority Claims.³

Applicant made all the payments under the approved Chapter 13 bankruptcy plan, and his dischargeable debts were discharged in January 2008. The trustee's report shows that Applicant paid \$35,239 into the plan. The trustee was paid \$3,093; Applicant's attorney was paid \$2,289; the IRS was paid \$776; \$24,307 was paid to secured claims; \$4,239 was paid to unsecured claims; and \$500 was refunded to Applicant or the trustee.⁴

Applicant's wife handles the family's finances. By 2015, they had developed additional financial problems, which he attributed to overspending, unexpected medical bills, and poor money management. He spent about \$200 to \$300 per month on recreational gambling. He and his wife went on a five-day cruise in September 2014. In early 2015, he and his wife bought and financed three new cars, including a new car for his stepdaughter who was supposed to make the monthly payments. A February 2016 credit report indicates the cars were financed for about \$36,000; \$35,000; and \$29,000.⁵

¹ Tr. at 48-50, 77; GE 1; AE A.

² Tr. at 26-27, 50; Applicant's response to SOR; GE 2, 4.

³ Tr. at 27-28, 51-52; Applicant's response to SOR; GE 2, 4-6; AE K.

⁴ Applicant's response to SOR; GE 4; AE K.

⁵ Tr. at 33-34, 41-43, 46-47; GE 3, 7.

Applicant and his wife filed a Chapter 13 bankruptcy case in August 2015. He paid \$18,550 to the trustee as of December 2016. The plan was approved in February 2017. His unsecured liabilities totaled about \$54,000, and included \$2,976 in student loans and about \$2,700 in unpaid federal taxes. The approved plan called for monthly payments of \$1,550 for 44 months for a total amount of payments during the bankruptcy of \$88,750. The plan calls for the trustee to receive \$8,875 through the plan, and Applicant's attorney to receive \$4,300. The IRS will receive \$2,847 for taxes from 2015. Applicant's mortgage loan of \$1,231 per month will be paid through the plan, but the three car loans were to be paid outside the plan. The plan did not anticipate paying any of the general unsecured non-priority claims. Applicant submitted documentation establishing that he is generally up-to-date in his payments to the trustee.⁶

Applicant stated that his stepdaughter's car was voluntarily repossessed because of mechanical problems, and that any deficiency is included in the bankruptcy. He and his wife testified that they do not plan on going through bankruptcy again. They cut up all their credit cards. He does not gamble anymore, and she curtailed her spending habits. They received financial counseling through their bankruptcy, and they also met with a financial counselor and maintain a budget. His wife recently went on a three-week cross-country road trip with her daughter and granddaughter. She estimated that the trip cost about \$2,500. He has about \$196,000 in his 401(k) retirement account.⁷

Applicant has been diligent about reporting his financial issues to his security officer. Witnesses testified and Applicant submitted documents attesting to his excellent job performance. He is praised for his trustworthiness, reliability, responsibility, work ethic, dependability, conscientiousness, diligence, and integrity. Work colleagues and his supervisor state that he is meticulous in his handling of classified information. They recommend that he retain his security clearance.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.

⁶ Tr. at 52-53, 56-57, 71-73; Applicant's response to SOR; GE 2, 4; AE L, M.

⁷ Tr. at 28-31, 35, 40-46, 53-60, 63; AE B-D.

⁸ Tr. at 16-20; AE E-H.

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;
- (c) a history of not meeting financial obligations;
- (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;
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and
- (i) concealing gambling losses, family conflict, or other problems caused by gambling.

Applicant has a history of financial problems, including multiple bankruptcy cases. His 2015 Chapter 13 bankruptcy case included about \$2,700 in unpaid federal taxes. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c), and 19(f) as disqualifying conditions.

Before his current bankruptcy case, Applicant was spending about \$200 to \$300 per month on recreational gambling. There is no evidence that he had a gambling problem. Gambling was part of his entertainment budget, like dining out. It is insufficient to generate concerns under AG ¶¶ 19(h) and 19(i). However, it will be considered under the mitigating 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;

(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;

(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; 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 attributes his financial problems in 1991 to his wife losing her job. Before his 2004 bankruptcy case, his wife lost her job again and became disabled. She has had eight surgeries on her foot. Applicant also indicated that his wife “liked to go shopping.” He attributed his most recent financial problems to overspending, unexpected medical bills, and poor money management. He spent about \$200 to \$300 per month on recreational gambling. He and his wife went on a five-day cruise in September 2014. In early 2015, he and his wife bought and financed three new cars totaling about \$100,000, although his stepdaughter was supposed to make the monthly payments on her car. He did not pay his federal taxes for 2015 when they were due.

Applicant is up-to-date in his payments to the trustee for his current Chapter 13 bankruptcy case. If he completes the plan, the trustee, his attorney, and his federal taxes will be paid. His student loan will likely be paid, and payments on his mortgage loan will be made. Like the Chapter 13 bankruptcy that was discharged in 2008, little if any of his general unsecured non-priority claims will be paid.

It is financially beneficial for Applicant to complete the Chapter 13 bankruptcy plan, and it is likely that he will do so. However, I am not confident that he will not find himself in financial problems again. His daughter’s car was voluntarily repossessed while the plan was in place, and his wife recently went on a three-week cross-country road trip with her daughter and granddaughter that cost about \$2,500.

Applicant’s financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. Security concerns raised by his finances are not mitigated.

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 honorable military service and excellent character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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: | Against Applicant |
| Subparagraphs 1.a-1.d: | Against Applicant |

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge