



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



In the matter of:)	
)	
)	ISCR Case No. 17-03631
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle P. Tilford, Esq., Department Counsel
For Applicant: *Pro se*

11/05/2018

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 November 6, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Department Counsel later withdrew the Guideline E allegation. Applicant responded to the SOR on November 16, 2017, and requested a hearing before an administrative judge.

The case was assigned to another administrative judge on December 13, 2017, and reassigned to me on July 26, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 16, 2018, scheduling the hearing for August 17, 2018. An amended notice was issued on August 6, 2018, changing the courtroom location, while keeping the date and time. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection.

Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection.

Findings of Fact

Applicant is a 36-year-old employee of a defense contractor. He has worked for his current employer since 2015. He served on active duty in the U.S. military from 2000 until he received a general under honorable conditions discharge in 2008. He seeks to obtain a security clearance. He attended college for a period without earning a degree. He is married with one child.¹

Applicant has had stable employment since he left the military, and his finances were in order before 2015. In 2014, he bought and financed cars in his name for him and a former fiancée who is not his current wife. The cars were financed for about \$23,000 and \$46,000. He accepted a job, and they moved to another state in early 2015. He worked overseas in 2015 and was earning a good salary. His ex-fiancée had access to his finances and was supposed to pay the car loans and other bills. When he returned, in addition to the car loans, he owed back rent, utilities, and other past-due debts. He broke off his engagement with his ex-fiancée. Having somewhere to live was more important than having something to drive. He paid the back rent, utilities, and other bills, and let the cars be repossessed.²

The SOR alleges a \$198 delinquent debt and charged-off debts of \$18,942 and \$13,650 for the deficiencies owed on the car loans for the two repossessed cars. He was unaware of the \$198 debt until he received the SOR. He paid it in November 2017.³

Applicant paid other debts that were not alleged in the SOR. He attempted to negotiate with the creditors for the two repossessed cars, but they insisted on large lump-sum payments, which he could not afford. His employer will send him back overseas if he receives a security clearance. His finances are otherwise in good shape. He credibly testified that he fully intends to pay or settle the debts. He has not received formal financial training other than what he received in the military.⁴

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.

¹ Tr. at 16, 26-33; GE 1.

² Tr. at 14, 17-28; GE 1-4.

³ AE A.

⁴ Tr. at 16-17, 29-30, 33-35; GE 2-4; AE B.

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 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 two repossessed vehicles. 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.

When Applicant returned from working overseas, he discovered that his former fiancée did not pay the bills. He broke up with her and attempted to put his finances

back in order. He paid the back rent, utilities, and other bills, but he was unable to catch up on the car loans, and they were repossessed.

Applicant paid the small debt alleged in the SOR. He attempted to negotiate with the creditors for the two repossessed cars, but they insisted on large lump-sum payments, which he has been unable to make. His finances are otherwise in good shape. His employer will send him back overseas if he receives a security clearance. He credibly testified that he fully intends to pay or settle the debts.

I am convinced that Applicant will resolve his remaining two delinquent debts. His financial difficulties were the result of conditions that were largely beyond his control, and he acted responsibly under the circumstances by paying the debts that he could. AG ¶ 20(b) is applicable. AG ¶ 20(a) is partially applicable. AG ¶ 20(d) is applicable to the paid SOR debt as well as the paid debts that were not alleged in the SOR.

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
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline E:	Withdrawn
Subparagraph 2.a:	Withdrawn

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