



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



In the matter of:)
)
) ISCR Case No. 17-03684
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

08/15/2018

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

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

History of the Case

Applicant submitted a security clearance application (SCA) on July 26, 2016. On November 14, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F, financial considerations. Applicant answered the SOR on December 11, 2017, and requested a hearing before an administrative judge. The Government was ready to proceed on January 11, 2018, and the case was assigned to me on March 16, 2018. On April 26, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 22, 2018. I convened the hearing as scheduled.

Government's Exhibits (GE) 1 through 4 were admitted, without objection. Applicant testified and Applicant's Exhibits (AE) A through G were admitted, without objection.¹ I received the completed transcript (TR) on June 7, 2018. I held the record

¹ On January 11, 2018, a discovery package was sent to Applicant. I marked that as Hearing Exhibit (HE) I, but did not admit it into evidence.

open until July 24, 2018, to allow Applicant to submit additional documentation. He timely submitted AE H through AE L, which were admitted without objection.

Findings of Fact

Applicant is 39 years old. He has worked as a customer service lead for his current employer since April 2017. He will be hired by a defense contractor if he receives a security clearance. This is his first security clearance application. Applicant has been married to his wife since 2008, and they have one child. He graduated from college in December 2001.

Applicant admitted to the five debts alleged in the SOR, which total \$37,300. Applicant attributes his financial issues to a period of increased expenses while he was employed at a company (Company A), unemployment after he left his job at Company A, and a period of underemployment.

Applicant started working for Company A in 2008. In approximately 2014, he was required to drive his personal vehicle extensively for work, which decreased the quality of life for his family and increased his expenses, resulting in financial difficulty. (TR at 13, 52-53) In May 2016, Applicant left his job at Company A, where he earned a base salary of \$64,000, to seek training and certification in the help-desk field. He had approximately \$17,000 saved to prepare for this job change. His wife was working full-time as well, earning approximately \$35,000 a year. Applicant was certified in June 2016, and immediately sought employment in the help-desk field. (TR at 13-14, 18-20, 52-53)

Applicant was offered a job by a defense contractor in July 2016, pending a security clearance investigation. (TR at 14) He believed the security process would be relatively quick and he would start the new position in a month or two. However, in December 2016, his clearance was still pending, and he had depleted his savings. To provide for his family, he obtained work at Company B, earning \$13.50 an hour. He was unable to continue paying the debts alleged in the SOR. (TR at 14, 53-55)

In April 2017, Applicant started working at Company C at \$17.50 an hour and tried to resume making payments to his creditors, but often times fell short. He continued to make sporadic payments to his creditors until the summer of 2017. Applicant was willing to pay the SOR debts, but he was unable to afford to make payments and pay for his family's mortgage, utilities, and basic necessities. (TR at 30, 35-37, 55-56; GE 2)

In December 2017 Applicant hired an attorney to file for bankruptcy protection. (AE A; AE B) Two months later, the Chapter 7 bankruptcy petition was filed and accepted. (AE C) All the alleged debts were included in the bankruptcy petition. Additionally, he attended bankruptcy-related credit counseling in December 2017 and debtor education in March 2018. (AE E; AE F; AE G) In June 2018, Applicant's bankruptcy and the debts alleged in the SOR were discharged. (AE K)

Prior to filing for bankruptcy, Applicant attempted to pay and resolve his debts. In the summer of 2015, he voluntarily turned in his vehicle to the dealer, which is alleged as

SOR ¶ 1.a. He was never late on the car payments, but could no longer afford the \$550 monthly payment and the additional expenses related to the extensive work travel. In August 2015, Applicant started making monthly \$200 payments to resolve the outstanding balance. He continued to make payments until November 2016, when his financial reserves were exhausted. (TR at 18, 21-22, 27-28; GE 2 at 4) In October 2015, Applicant hired a reputable debt-consolidation company to help him pay and resolve his debts, which were related to his employment at Company A. He made monthly payments of \$536 until the fall of 2016, when his savings were depleted. Applicant also attempted to modify his home loan to reduce his expenses. (TR at 18, 21-22, 27-28, 31-34, 50-51; GE 1 at 32; GE 2)

Applicant provided documentation showing that his current finances are in good standing and he has no new delinquent debts. This documentation also demonstrates that all of the debts alleged in the SOR were discharged. (AE L) He follows a written budget. (TR at 49; AE J) Applicant also provided two letters of recommendation reflecting his reputation for honesty, trustworthiness, and professionalism. One of the letters was written by a person who holds a security clearance and is familiar with Applicant's employment issues and financial delinquencies. (AE H; AE I)

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 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 concern under Guideline F (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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.²

² ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the documentary evidence establish two disqualifying conditions under AG ¶ 19:

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

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

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

Applicant experienced personal financial issues related to his employment at Company A. As a result, he sought credit counseling to resolve his debts in a responsible manner. Additionally, when he took a reasonable and calculated risk to change his employment, he had savings, and his wife was employed. Within 45 days of leaving Company A, Applicant was offered a job with a defense contractor. Unfortunately, he was under the impression that the adjudication of his security clearance would be timely. When his savings were depleted, Applicant took low-paying positions to provide for his family and continued to try to make sporadic payments toward the debts alleged in the SOR. His actions demonstrate a good-faith effort to resolve his debts.

Applicant filed for bankruptcy as a legal avenue of last resort. His debts were discharged, and he has no new delinquent debt. He and his wife are willing and able to live within their means, which is reflected in the testimonial and documentary evidence. Mitigation under AG ¶¶ 20(a), 20(b), 20(c), and 20(d) was established.

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 favorable character evidence.

I conclude Applicant met his burden of proof and persuasion. He mitigated the financial considerations security concerns and established his eligibility for a security clearance.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a to 1.e: For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

CAROLINE E. HEINTZELMAN
Administrative Judge