



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



In the matter of: )  
)  
) ISCR Case No. 17-04403  
)  
Applicant for Security Clearance )

**Appearances**

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

08/10/2018

**Decision**

LYNCH, Noreen A., Administrative Judge:

This case invokes security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 20, 2016. (Item 3.) On March 27, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. (Item 1.) The DOD CAF acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on January 29, 2018. (Answer), and on April 4, 2018, requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on March 29, 2018. A complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 9. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government’s evidence. Applicant responded to the FORM in a timely

manner and presented documentation from his bankruptcy attorney, which was included in the record, without objection, as AX A. The case was assigned to me on July 26, 2018.

### **Findings of Fact**

Applicant, age 45, is divorced and has three adult children. In June 1991, he earned his GED. He has been employed with his current employer since October 2016, as an aircraft painter. He was self-employed as a truck driver from approximately March 1999 to October 2016. He still drives a truck to supplement his income. Between October 2009 and November 2010, he worked for another defense contractor. He holds an interim DOD security clearance. (Item 3)

The Statement of Reasons (SOR) sets forth security concerns under Guideline F listing a Chapter 7 bankruptcy that was filed in 2008 and discharged in 2011; and a Chapter 13 bankruptcy filed in May 2017, currently pending. Applicant admits both allegations. (Item 1)

With regard to the 2008 bankruptcy, Applicant states in his Answer that he filed this bankruptcy due to financial hardship, citing his separation from his spouse, followed by their divorce in 2011. (Item 2) He filed for bankruptcy again in May 2017, citing lack of work and financial hardship. In his SCA, he reported filing for bankruptcy in the past.

Applicant's bankruptcy attorney provided in response to the FORM that the Chapter 13 bankruptcy filed in May 2017 is current with payments of \$680 bi-weekly. She elaborated that the payments are timely made and in full with no delinquencies. There is a deduction order for the payments in effect at Applicant's place of employment. The bankruptcy case is estimated to take a total of 61 months to complete. As it is set up, it will satisfy the debt to Applicant's car creditor and will maintain regular mortgage payments, as well as cure the mortgage arrears that were due at the time the bankruptcy case was filed. If the case continues, approximately 23% of the total unsecured debt will be paid and the remainder of debt will be discharged. (AX A)

In Applicant's 2017 investigative interview, he was uncertain of the dates of other bankruptcies that were filed. He stated that some were filed in his wife's name, but he was not sure of the dates or type of bankruptcy. He explained that his wife handled the financial matters. One of the bankruptcy petitions was filed to avoid a home foreclosure. (Item 4) Due to the passage of time, he is unable to recall specific debts and amounts of debt included in each bankruptcy. However, he does recall that many were related to home repairs and truck repairs. He had an old truck, but he has now replaced it with a newer one. When he was self-employed, due to lack of regular income, he had mortgage arrearages several times. He wanted to keep his home which he has lived in for many years. He also stated that his ex-wife has all the documents. (Item 4)

The record evidence establishes that Applicant has filed for bankruptcy six times: under Chapter 13 in December 1994, terminated; in January 1996; under Chapter 7 in October 2008, converted to Chapter 13 in March 2011; and then back to Chapter 7 again and discharged in June 2011; under Chapter 13 in December 2011 and dismissed in 2012

for failure to make plan payments; under Chapter 13 in December 2013 and dismissed in August 2014 for failure to make payments; under Chapter 13 in July 2015 dismissed upon trustee's motion, after Applicant failed to provide for payment of domestic support arrears, and under Chapter 13 in May 2017. This most recent bankruptcy was confirmed in November 2017. (Items 5, 6, and 7)

Applicant's numerous bankruptcy filings have resulted in one being discharged and dismissal for two of them for failure to make payments suggesting ongoing financial hardship. There is no evidence that Applicant lived beyond his means. Many of the accounts in the earlier bankruptcy in 2015, were medical bills. None were for tax bills. His bankruptcy attorney provided that the debt is not unusual in amount or type. (AX A) Applicant has also had difficulty earning an income to support his family due to truck driving, with no other skills. It was not until after 2010, when Applicant secured a stable job with a defense contractor, that things have improved. (AX A) He lost the contract in 2010 and had more years of relying on truck driving for a living. Also the marital separation and divorce exacerbated the problems. Applicant told the investigator that with this job as an airplane painter with a defense contractor his financial situation is stable. Before this current employment his monthly income was about \$3,500.

Applicant's bankruptcy attorney has confirmed that Applicant is current on his 2017 bankruptcy payment plan and has a track record of one year of payments. Applicant has chosen the wage earner's bankruptcy (Chapter 13) so that he can repay creditors rather than Chapter 7.

### **Policies**

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 (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, "Any 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. 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 EO 10865, “Any 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 *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 this guideline 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his two SOR bankruptcy filings, establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”),

and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not fully established. Applicant's current Chapter 13 bankruptcy was filed in 2017. The other SOR alleged bankruptcy has been discharged. However, the record evidence shows other bankruptcies from the past.

AG ¶ 20(b) is established. Applicant drove a truck for a living for many years. His income fluctuated and was non-existent at times. He had a separation and divorce. He sought bankruptcy as a legitimate way to resolve debt and to keep his home from foreclosure. He filed a Chapter 13 bankruptcy so that he could repay debtors. He has been striving to provide for his family and pay his bills. He is now divorced and the children are adults. There is no evidence of living beyond his means. He acted responsibly under his circumstances.

AG ¶ 20(c) and 20(d) are established. Applicant responded to the FORM and provided documentation of a year of payments on his Chapter 13 bankruptcy (wage earner's plan). The money is automatically deducted from his pay over a five-year period. This practice increases the likelihood that payments will be made on time and that the debtor will complete the plan. As a part of bankruptcy petitions and filings, one must complete the financial counseling course. According to his bankruptcy attorney, Applicant is on track with his Chapter 13 bankruptcy. Applicant has a stable income and also continues to drive his truck to supplement his income.

The website for U.S. Courts explains the basics for a chapter 13 bankruptcy:

The provisions of a confirmed plan bind the debtor and each creditor. 11 U.S.C. Section 1327. Once the court confirms the plan, the debtor must make the plan succeed. The debtor must make regular payments to the Trustee either directly or through payroll deduction, which will require an adjustment to living on a fixed budget for a prolonged period. Furthermore, while confirmation of the plan entitles the debtor to retain property as long as payments are made, the debtor may not incur new debt without consulting the trustee because additional debt may compromise the debtor's ability to complete the plan. 11 U.S.C. Sections 1305(c) 1322(a)(1), 1327.

Applicant met his burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a and 1b for Applicant.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including Applicant's low-paying self-employment for many years, separation and divorce and providing for his family by keeping his home from foreclosure, I conclude that Applicant carried his burden of showing that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

### **Formal Findings**

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

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a-b: For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is granted.

Noreen A. Lynch  
Administrative Judge