



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



In the matter of:)
)
) ISCR Case No. 18-01263
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro se*

November 19, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On May 21, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on June 6, 2018, and requested a hearing before an administrative judge. The case was assigned to me on August 27, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on August 28, 2018, and the hearing was convened as scheduled on September 24, 2018. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant offered three exhibits, referred to as Applicant's Exhibits A through C, which were admitted without objection. Applicant

testified on his own behalf. The record remained open until close of business on October 23, 2018, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 3, 2018.

Findings of Fact

Applicant is 49 years old. He is married with three children. He has a high school diploma and some college. He holds the position of Hydraulics Technician with a defense contractor. He seeks to obtain a security clearance in connection with his employment in the defense industry.

Paragraph 1 Guideline F – Financial Considerations The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

The SOR alleges that Applicant is indebted to six separate creditors totaling approximately \$32,000 that includes charge-offs, collection accounts, vehicle repossessions, and a Federal tax lien in the amount of approximately \$18,500. In his Answer, Applicant admits each of the allegations set forth in the SOR, except 1.b., and 1.f. Credit reports of the Applicant dated August 1, 2017; and July 31, 2018, reflect that each of these debts were owing at one point. (Government Exhibits 3 and 4.)

Applicant began working for his current employer in June 2017. He has never applied for or held a security clearance before. He testified that he and his wife are currently in the process of purchasing a house. They are using his wife's good credit to qualify for the house. He has been steadily working to improve his credit standing.

From 2001 to 2005/2006, Applicant and a business partner operated an ice cream store. Toward the end, he and his operating partner did not see eye to eye, and all of the company's losses were tallied under the Applicant's personal income tax as opposed to the business. As a result of this, Applicant eventually incurred two tax liens. He states that he has since paid all of the back taxes and the liens have been released. (Tr. p. 33 -36.)

From 2009 to 2011, Applicant explained that he worked for a construction contractor. At the end of 2009, he was injured on the construction site. For almost four years, until 2012, he was unable to work in his field of expertise. He explained that the injury left him with a broken bicep tendon in his left arm. After it healed and was repaired, he was sent back to work sooner than he should have been, and he ruptured the left arm again. It was still impossible for him to find work in his field and so he took on odd jobs and was self-employed. Applicant states that while he was injured, he did not file income taxes because he did not owe taxes, and had very little income. Since then, he states that he has filed all of requisite income tax returns. In 2013, Applicant received a workmen's compensation settlement award for around \$50,000 or \$60,000

dollars, which was compensation for both arm injuries. (Tr. p. 51.) During this period where he was underemployed, he incurred lots of financial problems as he was unable to pay his bills. He states that he paid most of the debt with the settlement award, including some personal loans he had. (Tr. p. 31.) Applicant is also taking care of his critically sick father-in-law and is savings for his funeral expenses.

The following delinquent debts listed in the SOR also became owing:

1.a. Applicant was indebted to a creditor for an account that was charged off in the approximate amount of \$8,037. This was a personally owned truck that Applicant used for work that was repossessed. Applicant has not yet paid the debt but he plans to make arrangements to do so.

1.b. Applicant was indebted to the Federal Government for a tax lien entered against him in the approximate amount of \$18,562. Applicant states that he has filed all of his back tax returns and satisfied all of his back taxes and no longer owes the IRS. A letter from the IRS for tax period ending December 31, 2017, shows a zero balance as of April 2, 2018. (Applicant's Exhibit A.)

1.c. Applicant was indebted to a creditor for an account that was placed for collection in the approximate amount of \$181. Applicant states that he is contesting the debt but has provided nothing documentary to substantiate this. (Tr. pp. 37-38.)

1.d. Applicant was indebted to a creditor for an account that was placed for collection in the approximate amount of \$908. Applicant believes he only owes about \$400 and plans to make payment arrangements to pay it.

1.e. Applicant was indebted to a creditor for an account that was placed for collection in the approximate amount of \$4,298. This is a truck repossession that occurred in 2014/2015. He explained that at the time he was struggling financially. He and his wife had put a deposit down of \$5,400 to rent a house that actually turned out to be a scam. The person renting the home, rented it to twenty different people, and Applicant lost his deposit. The District Attorney filed a criminal action against the perpetrator and he was prosecuted. The court ordered restitution for the Applicant in the amount of \$5,400, but he never received it. A letter from the district attorney's office dated June 24, 2015 confirms this incident. (Applicant's Exhibit B.)

1.f. Applicant was indebted to a bank for an account that was charged off in the approximate amount of \$828. Applicant settled the debt in the amount of \$248.62. (Applicant's Exhibit C.)

Applicant submitted an Income and Expense Statement that he prepared which shows that after paying all of his monthly expenses, he still has discretionary funds available that could be used to pay those bills that he has not yet addressed in the SOR. (Applicant's Post-Hearing Exhibit A.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 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.

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 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 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, as follows:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

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

Applicant has incurred delinquent debts that he has been unable to pay in a timely fashion. Admittedly, he suffered a serious injury on the job, resulting in long periods of underemployment, and he was a victim of a financial scam that took his rental deposit of \$5,400 that was never returned to him. However, other than his taxes he paid with his settlement award, he has not shown progress toward resolving the debt listed in the SOR. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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, or 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; 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.

It is noted that Applicant has paid off his back taxes and has had the tax liens filed against him released. However, Applicant has not made much progress toward addressing the delinquent debt listed in the SOR. He states that he paid off and resolved many other debts he had with his settlement award he received several years ago. Those debts, however, are not the debts listed in the SOR. The debt listed in the SOR that remain outstanding totals in excess of \$13,000, and Applicant has not made the effort to resolve them. In fact, he has other priorities for his money. Instead of paying his delinquent debt, he has chosen to save money and/or use it for other purposes. He does not clearly understand the responsibilities that come along with possessing a security clearance. He has not demonstrated financial responsibility. Concerning his delinquent debt, he has not acted reasonably and responsibly, and has not demonstrated good judgment, reliability, and trustworthiness. The Financial Considerations concern has not been 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. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge