



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



In the matter of:)
)
) ISCR Case No. 17-03780
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey DeAngelis, Esq., Department Counsel
For Applicant: James Fleisher, Esq.

09/10/2018

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to live within his means and has filed for bankruptcy on more than one occasion. His most recent bankruptcy was dismissed and he is responsible for approximately \$75,000 of debt with his unsecured creditors. Those debts have not been addressed or resolved. Applicant has purchased three new cars within the last three years after the bankruptcy was dismissed. Applicant failed to mitigate the security concerns under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On November 9, 2016, Applicant submitted a security clearance application (SCA). On December 13, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), 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; DOD Directive 5220.6, *Defense Industrial Personnel*

Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

On January 12, 2018, Applicant responded to the SOR, and he requested a hearing before an administrative judge. He admitted all of the SOR allegations, and he submitted documentation. On February 14, 2018, the case was assigned to me. On April 12, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of the video teleconference hearing, setting the hearing for May 8, 2018.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 8, which were admitted into evidence without objection. Applicant's counsel offered Applicant Exhibit (AE) A through E, which were admitted into evidence without objection. Applicant and one character witness testified at the hearing. I held the record open until June 8, 2018, in the event either party wanted to submit additional documentation. Applicant's counsel timely submitted AE F, which was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 5, 2018, and the record closed on June 8, 2018.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact:

Applicant is 59 years old. He has been employed as a subject matter expert in the internet technology (IT) field for a DOD contractor since April 2016. He has taken some college courses, and he has earned professional certifications, but he does not have a college degree. He and his wife were married for 36 years, until they divorced in 2017. He has two adult children, ages 33 and 36. Applicant is required to pay his spouse monthly alimony in the amount of \$2,600. He does not currently possess a DOD security clearance. (Tr. 43-45, 47, 49, 78-79; GE 1)

Applicant testified that his financial problems started in approximately 2003 after his spouse lost her job. She eventually found some part-time work, but her income was minimal. In 2008, both Applicant and his spouse lost their jobs. Applicant was making approximately \$97,000 annually at the time. He was unemployed for a few months, and then he found employment making approximately \$65,000 a year. After working for about six months with this employer, Applicant was hired to work on an air force base making approximately \$77,000 a year. Applicant and his spouse's loss of employment, and periods of under-employment, had a negative impact on their finances. (Tr. 49-51; GE 1)

Applicant had previously worked for City 1 for about two years assisting the city with their computer systems. In about 2009, Applicant was notified that he owed approximately \$14,000¹ for unpaid city taxes. Applicant's finances quickly spiraled downward after he received this notice. Applicant consulted with an attorney and was

¹ Applicant's city income tax debt was listed in the Chapter 13 bankruptcy as \$11,757.61. GE 3

told that the estimated legal fees to dispute the city tax issue would most likely be as much, if not more, than the current unpaid city taxes. Applicant stated that he did not want his wages garnished to pay for the city taxes, so he filed Chapter 13 bankruptcy in 2010, as his attorney advised. Applicant's bankruptcy liabilities totaled \$305,499.99. (Tr. 51- 55, GE 3)

Beginning in August 2010, Applicant was ordered to pay \$2,893 monthly to the Chapter 13 bankruptcy trustee. In May 2012, the monthly amount was lowered to \$2,310. In March 2014, the debtors requested the monthly payment to be modified to \$998, as they had surrendered their home to the mortgage holder. The court confirmed the modified monthly payment in April 2014. Applicant had his paycheck automatically deducted to pay the Chapter 13 bankruptcy trustee. (GE 3)

During the course of the bankruptcy, Applicant had employment with different contractors. One of the Federal contractors informed Applicant that they did not know how to deduct the Chapter 13 payments from his paycheck. In March 2015, the trustee notified the court that Applicant made his last payment in January 2015, and filed a motion to dismiss for failure to make payments. Applicant's attorney, Applicant and his spouse were served a copy of the motion. Applicant admitted receiving a copy of this motion, and he failed to take action. In April 2015, Applicant's Chapter 13 bankruptcy case was dismissed for failure to make payments. (SOR ¶ 1.a) The trustee's final report showed that a total of \$117,550.73 had been disbursed to Applicant's bankruptcy creditors, to include payment in full for the city tax debt. (Tr. 57; GE 3)

Applicant listed in his 2016 SCA that he was "discharged from all debts" that he claimed in the 2010 bankruptcy. At the hearing, Applicant testified that was an error on his part. In his SOR response, he confirmed that he that had received notice from the court that he was still liable for any outstanding accounts since his bankruptcy case had been dismissed. He testified that he still owed about \$75,000 for his outstanding unsecured consumer credit card debt. After his bankruptcy was dismissed in April 2015, Applicant purchased a 2015 car for his spouse that same month. His ex-wife is now responsible for paying the monthly car payments from her alimony. In 2016, Applicant purchased a new car for himself. He then traded in that vehicle for a 2017 vehicle the following year. (Tr. 56-58; 85-90, 104; GE 1, 3)

SOR ¶ 1.b alleges Applicant filed Chapter 13 bankruptcy in 2002. In 2002, Applicant received a notice from the Internal Revenue Service (IRS) and the state for unpaid taxes in the total approximate amount of \$45,000. His attorney advised Applicant to file for Chapter 13 bankruptcy as a way to structure manageable tax payments. Applicant fulfilled his Chapter 13 bankruptcy obligations and his case was discharged in 2006. During the hearing, Applicant admitted that he had also filed for bankruptcy in 1991. The 1991 bankruptcy was not alleged in the SOR, but was presented by Government counsel for limited consideration. Applicant's Department of Energy security clearance was revoked in about 1991, which caused him to lose his job. This event is what led him, in part, to file for bankruptcy in 1991. Due to this security clearance revocation, Applicant admitted that he is fully aware that finances is one of

several factors that come under scrutiny when an individual is being considered for a government security clearance. (Tr. 83-84; GE 4; AE C, D)

The SOR alleges that Applicant is indebted on a home mortgage loan in the full amount of \$228,656, of which \$57,098 was delinquent. The home was in foreclosure status. (SOR ¶ 1.c). Applicant admitted that during his 2010 bankruptcy, his mortgage interest rate dropped to 5.9% from the previous 9.9%. He contacted the mortgage holder and asked if the 5.9% interest rate would be maintained after the bankruptcy was complete. He was told that the mortgage interest rate would revert back to the 9.9%. Applicant then decided to surrender his house to the mortgage holder. Applicant testified that he recently spoke with the mortgage creditor and confirmed that he does not owe any money after the foreclosure of his home. His May 2018 credit report also showed a zero balance on this account. Applicant received an IRS Form 1099-C for tax year 2017 disclosing the amount of debt discharged by the mortgage holder was \$173,531. Applicant's potential tax consequences from the Form 1099-C is unknown. (Tr. 58- 67; AE B, F)

SOR ¶ 1.d alleges Applicant is indebted to a collection agency for a cellular account in the amount of \$651. Applicant stated that he had been disputing this account, however, he settled the account for less than full value. He attached a statement from the creditor with his SOR response. This account was resolved after the receipt of the SOR. (Tr. 76-77)

The last three accounts under Guideline F, (SOR ¶¶ 1.e, 1.f. and 1.g), allege that Applicant owes a combined total of \$694 for unpaid medical service accounts that were referred for collection. Applicant stated that one account was reflected as delinquent despite that he was making regular payments on the account, another account's billing statements had been mailed to the wrong address, and the last account became delinquent due to a medical insurance payment issue, which has now been resolved. Applicant attached documentation with his SOR response showing that all three medical collection accounts have been paid in full. (Tr. 77-78)

Applicant stated that his financial issues were the result of the 2008 recession, loss of employment, and unexpected reductions in salary. He separated from his spouse in 2014. During that time he was also taking care of his father diagnosed in 2006 with Alzheimer's. His father passed away in 2015, and he and his wife divorced in 2017. Applicant started financial counseling after meeting with his counsel, and he had attended two counseling sessions, with the most recent attendance the day before this hearing. Applicant formulated a monthly budget and keeps track of his financial obligations on a spreadsheet. He is currently living with his girlfriend in an apartment, and she is paying the majority of their living expenses. (Tr. 46-47, 49-51, 67-68, 70-72; 74-75; AE E)

A co-worker who met Applicant in a professional setting in early 2009, testified that he worked with Applicant for approximately four years. After the witness retired in 2013, he has maintained a close, personal relationship with Applicant to the present

time. The witness was aware of his financial problems, to include tax problems which resulted in Applicant filing for Chapter 13 bankruptcy in 2002, and the city tax bill, which prompted Applicant to file for Chapter 13 bankruptcy in 2010. He has advised Applicant to live a more frugal lifestyle, such as packing lunch instead of buying lunch every day,² or putting money into his 401K. The witness entered into a business arrangement with Applicant, and stated that Applicant has never missed a contract payment since 2014. He would have no qualms about Applicant holding a DOD secret security clearance with one condition, as long as a metric could be put in place to monitor Applicant's compliance and ensure he is fiscally responsible. (Tr. 24-28, 32, 41-42; AE A.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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

² Applicant's personal financial statement (AE E) reflected \$200 set aside monthly for lunches. His car payment is \$844.43 per month, and he has \$300 per month for "miscellaneous." After paying his expenses, Applicant has a monthly net remainder of \$152.90.

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 that an applicant may deliberately or inadvertently fail to 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 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 relating to the guideline 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. 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 financial security concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

(e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

Applicant has filed for bankruptcy on multiple occasions. He filed for Chapter 13 bankruptcy in 2010, but this case was dismissed in April 2015 for his failure to make regular payments to the bankruptcy trustee. The unresolved accounts in the dismissed bankruptcy total approximately \$75,000, for which he remains responsible. There is no evidence that Applicant has repaid or is in the process of resolving his accounts with the unsecured creditors. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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, 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 has a long history reflecting his inability to live within his means. Based on the documentary evidence offered by the Government, his unsecured creditors from the dismissed bankruptcy case in April 2015 remain largely unaddressed. The same month his Chapter 13 bankruptcy case was dismissed, Applicant purchased a brand new car for his spouse. The following year, he purchased a brand new car for himself. In 2017, he traded in that car for a 2017 vehicle. Applicant offered insufficient information regarding his efforts to avoid this recurring scenario of debt acquisition in the future. That, and the fact insufficient time has passed for him to demonstrate that he can live within his means moving forward, preclude application of AG ¶ 20(a). Moreover, since many of his monetary problems stem from poor financial decisions, Applicant's

unfortunate financial predicament is not a circumstance solely beyond his control, AG ¶ 20(b) does not fully apply.

Applicant has received financial counseling, but he also admitted attending only two sessions, with his last meeting occurring the day before his hearing. There is scarce information indicating whether his financial planning has improved or if his bankruptcy consumer debts are now being addressed. To his credit, he has resolved most of the debts alleged in the SOR, and paid his secured creditors listed in his most recent bankruptcy. It is clear from the evidence, however, that Applicant has not been able to curb his excessive spending, such as with his recent new car purchases. For a time, Applicant was addressing his delinquent debts through bankruptcy. However, that bankruptcy was dismissed, and significant unsecured debt remains unresolved. Applicant also surrendered his home to the mortgage holder for foreclosure, which is a lawful and legitimate method for addressing such financial distress. While both actions are lawful, they do not necessarily reflect good-faith efforts to address one's debts. Consequently, AG ¶¶ 20(c) and (d) do not fully apply.

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. Some of the factors in AG ¶ 2(d) was addressed under those guidelines, but some warrant additional comment.

Applicant failed to live within his means and has filed for bankruptcy on more than one occasion. His most recent bankruptcy was dismissed and he is responsible for approximately \$75,000 of debt with his unsecured creditors. Those debts have not been

addressed or resolved. Applicant has purchased three new cars within the last three years after the bankruptcy was dismissed.

Applicant has a history of living beyond his means. Until there are clear indications that Applicant has curbed his excessive spending behavior, there is a distinct possibility that his financial problems will recur. Overall, his financial actions do not show sufficient good judgment, reliability, and trustworthiness. Because protection of the national interest is the principal focus of these adjudications, any unresolved doubts must be resolved against the granting of access to classified information.

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.b:	Against Applicant
Subparagraphs 1.c-1.g:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge