



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-04228

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2018

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant presented sufficient information to mitigate security concerns raised by his financial circumstances. Clearance is granted.

Statement of the Case

On January 12, 2018, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline.¹ On February 6, 2018, Applicant answered the SOR (Item 2, Answer) and requested a determination on the administrative (written) record. He admitted the delinquent accounts listed on the SOR, and filed a Chapter 13 Petition for Bankruptcy.

On February 26, 2018, Department Counsel sent Applicant the Government's written case, known as a file of relevant material (FORM). With the FORM, Department

¹ The CAF took this action under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the AGs implemented in June 2017.

Counsel forwarded to Applicant seven exhibits (Items 1 – 7) that the Government offers for admission into the record.

On March 9, 2018, Applicant submitted a response to the FORM (Response). The Response consists of receipts of payments to the Bankruptcy trustee, which he offers for admission into the record. (AX A-B) In his Answer, he provided information about his bankruptcy attorney and his plan to resolve his delinquent debts. (Item 2) On April 13, 2018, I was assigned the case.

Findings of Fact

Applicant, 40, is currently sponsored by a defense contractor supporting the U.S. Government. His contract ended in May 2017. He has taken part-time jobs to support himself and his family. Applicant was in Army infantry school from July 2006 until December 2006. He served in the U.S. military on active duty from December 2006 to January 2010, and Army National Guard from February 2010 to December 2010. He transferred to the Air Force Reserve from 2010 to May 2012, and was honorably discharged. He was an E-4. He worked in Afghanistan for a contractor from September 2012 until April 2013. Applicant was called home due to his parents' hospitalization. (Item 3) He is married and has two children. In 2011, he obtained his associate's degree. He has held a security clearance in the past. He completed his security clearance application in March 2016. (Item 3)

In his answer, Applicant stated that the financial hardships began in 2013 and 2014. His wife developed kidney problems, could not work, and therefore, they incurred multiple medical bills. She had several surgeries in 2014. Applicant used credit cards to pay the medical bills. Eventually, he could not afford the minimum payments. Also, when he was on active duty, his wife did not work as it was more cost effective for her to stay home with the two young children than to find day care. (Item 2) After his military service, he did not find stable work for various periods of time. The multiple and considerable unemployment periods after his military service on active duty created more reliance on credit cards. He had no health insurance and suffered a shoulder injury, which required hospital care. His wife returned to work and was the sole provider for the family of four, but there was not sufficient money to cover expenses and credit card debts. They eventually moved in with Applicant's family to save money. Applicant stated in his 2018 answer to the SOR that in approximately 2016, they sought the advice of a bankruptcy attorney. (Item 2)

The SOR alleges seven delinquent debts, which total about \$37,000. Applicant admits six delinquent debts, but disputes 1.e based on the fact that he returned the cable equipment. Applicant's credit reports confirm the delinquent debts, but also show many accounts "pays as agreed." (Item 5, 6) Applicant accepted responsibility for his debts. He suffered unemployment or underemployment again and again. (Item 2) When Applicant was employed in Afghanistan, he received notice that his mother had been admitted to the hospital with a life threatening illness. Applicant came home to his mother. At the same time his father was hospitalized and underwent emergency bypass surgery. He took out a loan to help his parents.

When Applicant and his wife determined that the bankruptcy attorney's advice to file for bankruptcy was the best option for them, they could not afford the \$1,600 court and attorney fees in advance of filing a Chapter 7 petition. Instead, Applicant and his wife submitted a Notice of Chapter 13 Bankruptcy case with a date of December 2017. It listed the official filing date as February 19, 2018. Applicant and his wife completed and presented the Certificate of Credit Counseling, dated January 28, 2018. This was a requirement before the actual filing of the Chapter 13 Bankruptcy petition. (Item 7)

In Applicant's response to the FORM, he explained that his bankruptcy attorney advised the Chapter 13 bankruptcy. He filed a Chapter 13 so that his creditors could be paid. He accepted accountability for the delinquent debts and want to rebuild his credit history. He now has the knowledge from the financial counseling and is set for a steady job with his current contractor. He worked hard and did not spend money in a frivolous manner. He had many circumstances happen that were beyond his control. Before the 2013-2014 time frame he was in a better financial status.

The Chapter 13 repayment plan is slated for 36 monthly payments of \$164. This was determined on the means test based on current available joint income. When Applicant gains his full-time employment with his contractor, the monthly payments will be adjusted accordingly. Applicant reiterated that he wanted to take the most fiscally responsible bankruptcy plan. Applicant has submitted receipt payments from March, April, and May, each in the amount of \$164. With regard to the tax issue mentioned by counsel in the FORM, before signing the bankruptcy petition, Applicant provided proof of taxes paid back to 2015. He completed the federal and state tax for 2017 and an amount was owed to the state. His bankruptcy attorney advised him to include the state tax in the Chapter 13 filing

Credit reports from 2016 and 2017 reflect the alleged delinquencies, but also clearly show that prior to the medical issues and unemployment, Applicant had accounts that note "pays as agreed."

The issue is not whether Applicant has paid all his debts. He has used a legal means to resolve them. He is on the right track and submitted documentation that he is paying his monthly Chapter 13 payments. The issue is whether the financial circumstances raise security concerns. Applicant provided such information to mitigate any concerns in response to the FORM.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individuals are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2; SEAD 4, ¶ E.4.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. AG ¶ 2.

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

Administrative Judges make certain that applicants: (a) receive fair notice of the issues, (b) have a reasonable opportunity to address those issues, and (c) are not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In deciding a case, a judge must resolve any doubt raised by the evidence in favor of the national security. AG ¶ 2(b). *See also* SEAD-4, ¶ E.4. Moreover, the Supreme Court has held that officials making "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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. 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 an 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.

Analysis

Guideline F, Financial Considerations

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. . . .²

Guideline F is not limited to a consideration of whether a person with financial issues might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances

² AG ¶ 18.

giving rise to delinquent debt cast doubt upon a person's judgment, self-control, and other qualities essential to protecting classified information.³

In assessing Applicant's case, I considered all of the disqualifying and mitigating conditions under Guideline F, including the following:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts . . . ;

AG ¶ 19(c): a history of not meeting financial obligations;

Applicant acknowledged his delinquent debts and resolved them by filing a Chapter 13 Bankruptcy. The above disqualifying conditions apply.

AG ¶ 20(a): the behavior happened so long ago, . . . 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 . . . and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem . . . and there are clear indications that the problem is being resolved or is under control;

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

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

A security clearance adjudication is not a debt-collection process. Instead, an administrative judge examines the way an applicant handles his or her personal financial obligations to assess how they may handle their security responsibilities.⁴ Moreover, the resolution of past financial issues alone without evidence of true reform and rehabilitation is of limited probative value in the security clearance context.⁵

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

⁴ See *generally* ISCR Case No. ISCR Case No. 12-09719 at 2-3 (App. Bd. Apr. 6, 2016).

⁵ Compare, ISCR Case No. 12-04806 (App. Bd. July 3, 2014) (despite the presence of unresolved debt, Board affirmed judge's grant of a clearance because clear evidence of reform and rehabilitation), *with*, ISCR Case No. 15-03481 (App. Bd. Sep. 27, 2016) (applicant's resolution of alleged financial issue (filed overdue tax returns) was insufficient to mitigate security concerns, because no extenuating circumstances to explain financial issue and no evidence of financial reform).

Applicant's history of timely payments on his debts and the circumstances that occurred beyond his control that led to the financial issues are factors in his favor. He served in the U.S. military. He was unemployed and had medical issues for his wife and his parents. His debts occurred but he acted responsibly. He explained the details of his hardships. He sought guidance from a bankruptcy attorney two years ago, but he did not have the available resources to continue. He completed the required financial counseling for the bankruptcy filing. He is on the right track. AG ¶¶ 20(a) – 20(d) apply.

Individuals applying for a security clearance are not required to be debt free. They are also not required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present evidence to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to classified information.⁶ Applicant met his burden of proof and persuasion. His financial situation continues to improve and I have no doubts as to his due diligence.

Whole-Person Concept

An administrative judge must make a commonsense judgment about a person's security clearance suitability after considering all available, reliable and relevant information. This is referred to as the whole-person concept.⁷ A judge's assessment in these cases is informed by the guidelines, as well as the non-exclusive factors set forth in AG ¶¶ 2(d) and 2(f). I hereby incorporate my above analysis and highlight some additional whole-person factors.

Applicant served in the U.S. military for many years and was honorably discharged. He has worked for his employer until the contract ended. He previously held a security clearance. Applicant is married and has two children. He provides for his family. He took an assignment in Afghanistan, but had to return home due to his parents' hospitalization. He has guarded classified information for years. He had periods of unemployment, but took part-time jobs. He sought advice and has filed for Chapter 13 bankruptcy so that he can pay his creditors. He submitted information to document the payments that he has made. He is poised to return to his contracting job, which will provide a steady income. I have no questions or doubts about his eligibility for 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:

⁶ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008). See also ISCR Case No. 15-02585 (App. Bd. Dec. 20, 2016) (reasonable for judge to expect an applicant to present documentary evidence).

⁷ See generally AG ¶ 2. See also SEAD-4, ¶ E.4; Directive, ¶ 6.3.

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.g: For Applicant

Conclusion

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to continue Applicant's access to classified information. Applicant's request for a security clearance is granted.

Noreen Lynch
Administrative Judge