



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 14-01160 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

10/20/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted personal conduct security concerns, and he mitigated financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On April 30, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on May 23, 2014, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on July 23, 2014. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit

material to refute, extenuate, or mitigate the security concerns. Applicant responded with a memorandum that has been marked Applicant's exhibit (AE) 1. The case was assigned to me on July 18, 2014. The Government exhibits included in the FORM (Items 5-8) and AE 1 are admitted without objection.

Findings of Fact

Applicant is a 52-year-old employee of a defense contractor. He has worked for his current employer since 1999. He seeks to retain his security clearance, which he has held since at least 2005. He has a bachelor's degree. He is married with two adult children.¹

The SOR alleges a \$38,525 federal tax lien (SOR ¶ 1.a) and nine delinquent debts with balances totaling \$12,432. The debts are listed on a credit report from December 2013. Applicant denied owing the \$329 medical debt alleged in SOR ¶ 1.j. He admitted owing the remaining debts at some point, but he stated that he paid or settled the debts alleged in SOR ¶¶ 1.b (\$265), 1.c (\$348), 1.d (\$3,933), and 1.h (\$1,510), and he was making payments toward his federal tax debt.²

Applicant was diagnosed with cancer in 2007. He underwent several months of extensive treatment and hospital stays. He was out of work for about eight months. His disability payments ran out, and his family's income was greatly reduced. A number of creditors raised their interest rates after he made late payments. He was unable to pay all his bills on his wife's income, and debts became delinquent.³

Applicant's wife retired from her job in 2010. They used funds from her retirement account to pay or settle several delinquent debts. Applicant's credit reports verify that a number of non-SOR debts were paid or settled before the SOR was issued. The withdrawal from the retirement account created greater tax consequences than anticipated. The IRS filed a \$38,525 tax lien against Applicant in November 2012.⁴

Applicant initiated an installment agreement with the IRS in November 2013 in which he proposed to pay \$300 per month for 12 months followed by monthly \$650 payments until the debt is paid. The IRS also retains any income tax refunds. As of May 2014, Applicant was making monthly \$650 payments and the debt had been reduced to \$27,963.⁵

¹ Items 5, 6.

² Item 4.

³ Items 4-8.

⁴ Items 4-8.

⁵ Item 4.

Applicant stated that he was working on a settlement with the creditor for the \$4,517 credit card debt alleged in SOR ¶ 1.e. He planned to pay the \$243 (SOR ¶ 1.f) and \$119 (SOR ¶ 1.i) medical debts as quickly as possible. He denied owing the \$329 medical debt alleged in SOR ¶ 1.j, stating the debt should have been paid by his medical insurance. The debt was listed by Experian on the December 1013 combined credit report. It was not listed on the June 2014 Equifax credit report.⁶

Applicant indicated that he paid or settled the debts alleged in SOR ¶¶ 1.b (\$265), 1.c (\$348), 1.d (\$3,933), and 1.h (\$1,510) in 2009 and 2010. He provided specific details about the dates, amount paid, and to whom the amount was paid. The debts are all listed on the combined credit report obtained in December 2013, but only the \$348 debt alleged in SOR ¶ 1.c is listed with a balance on the June 2014 Equifax credit report.⁷ I find that the debts alleged in SOR ¶¶ 1.b, 1.c, 1.d, and 1.h have been resolved.

Applicant stated that his finances are in better shape. The loan on his car is paid. His wife returned to work. He consulted with a credit counseling company. The company reviewed his situation and advised him to continue with the actions he had already commenced. He was advised to maintain the payments on his mortgage loan, utilities, insurance, and car loans, and to work with the creditors and collection companies to pay his unsecured debts as funds become available. Applicant has continued to follow that advice.⁸

Applicant submitted a Questionnaire for National Security Positions (SF 86) in November 2011. Under Section 26, he listed his IRS debt. He estimated the tax at \$39,300 and noted the IRS filed a lien against him. Under another section, he answered “yes” to the following question:

In the past seven (7) years, have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? (include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)”

Applicant listed a credit card account that he noted was “paid off and closed.” He did not disclose any other accounts that had been delinquent.⁹

Applicant denied intentionally falsifying the SF 86. His wife handled the finances when he was sick, and he was unaware of the extent of his indebtedness. He also had some difficulty understanding the questions.¹⁰ Having considered all the evidence,

⁶ Item 4, 7, 8; AE 1.

⁷ Item 4, 7, 8; AE 1.

⁸ Item 6-8; AE 1.

⁹ Item 5.

¹⁰ Item 4; AE 1.

including that Applicant was forthcoming about the amount owed the IRS and the tax lien, I find that he did not intentionally falsify the SF 86.

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 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 access to classified information will be resolved in favor of 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 security concern for financial considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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

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

Applicant has delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant was diagnosed with cancer in 2007. He underwent extensive treatment, and he was out of work for about eight months. Applicant's financial problems were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that

the individual act responsibly under the circumstances. Applicant has been working to resolve his financial problems for a few years. He paid or settled a number of debts, including several debts that were not alleged in the SOR. He has a payment plan with the IRS and intends to pay his remaining delinquent debts.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that Applicant made a good-faith effort to pay his debts. There are clear indications that his financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(c) and 20(d) are applicable. AG ¶¶ 20(a) and 20(b) are not completely applicable because Applicant did not appropriately handle his taxes, and he still has debts to be resolved.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally provide false information on his SF 86. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

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(a):

(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 Guidelines E and F in this whole-person analysis.

Applicant's financial problems resulted from his cancer. As indicated above, an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. I find that Applicant has established a plan to resolve his financial problems, and he has taken significant action to implement that plan.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, and he 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:

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| Paragraph 1, Guideline F: | For Applicant |
| Subparagraphs 1.a-1.j: | For Applicant |

Paragraph 2, Guideline E: For Applicant

Subparagraph 2.a: For Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge