



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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XXXXXXXXXXXXXXXXX) ISCR Case No. 14-03274
)
)
Applicant for Security Clearance)

Appearances

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

08/10/2015

Decision

HOWE, Philip S., Administrative Judge:

On March 1, 2013, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP; SF 86). On August 5, 2014, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 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 within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on August 12, 2014. He answered the SOR in writing on September 16, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 23, 2015, and I received the case assignment on February 24, 2015. DOHA issued a Notice of Hearing on April 23, 2015, and I convened the hearing as scheduled on May 6, 2015.

I denied Applicant's request for a continuance to obtain counsel because he had since October 22, 2014, when he received the Government exhibits to retain an attorney.

The Government offered Exhibits 1 through 10, which were received without objection. Applicant testified and submitted Exhibits A through N, without objection. DOHA received the transcript of the hearing (Tr.) on May 14, 2015. I granted Applicant's request to keep the record open until May 22, 2015, to submit additional matters. On May 21, 2015, he submitted Exhibits O to X without objection. The record closed on May 22, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Subparagraphs 1.b, 1.c, 1.d, and 1.e of the SOR, with explanations. He denied the factual allegations in Subparagraph 1.a of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 60 years old, married, and works for a defense contractor. He also works as a baseball umpire for local teams. He has three adult children. He and his wife do not have any credit card debt. Their total annual income is about \$105,000. Applicant has had a security clearance since 1975 with no incidents reported. He has prior military service. He has worked for the same company since 1984. (Tr. 38, 44, 49, 57; Exhibits 1, 2)

Applicant filed two Chapter 13 bankruptcies, one in 2006 that he successfully paid and was discharged in 2009 (Subparagraph 1.b). He filed the current one in 2014. He pays the bankruptcy trustee \$524 monthly to resolve the debts in the bankruptcy. His payments are current, having made 10 payments on a 5-year bankruptcy plan. He tried to file Chapter 7 bankruptcies in 2000, 2001, and 2002, but they were dismissed by the court. He does not remember why those dismissals occurred. (Tr. 26-32, 37, 41, 42; Exhibits 1-10, A to E, O, P)

Applicant did not file a Chapter 7 bankruptcy in October 2002 to be discharged in January 2003 (Subparagraph 1.a). His wife filed that action on her own behalf. (Tr. 43; Exhibits 2-4)

Applicant lost his job at his company in 2011 as part of a reduction in force (RIF). He was reemployed there two weeks later with a 15% pay reduction. Applicant had five surgeries in 2009. When he was on sick leave he only earned 70% of his usual income. He was off work for a hernia surgery for four weeks in September 2012 and then returned to the hospital for treatment of a serious infection for two months from December 2012 to February 2013. (Tr. 33-35, 56; Exhibit N)

Applicant's financial difficulties arose from his pay reduction in 2011, the need to make window and other home repairs (e.g., window replacements, air conditioner

upgrades, wallboard repairs from air conditioner leaks in the attic), which cost him money he could have used to keep his mortgage payments current, and his five surgeries that cost him time off from work with its attendant pay reductions to 70% of his regular pay. He also had insurance co-pays totaling \$8,000. He fell behind in his mortgage payments in 2013. He attempted to negotiate a loan modification with his mortgage lender but was unsuccessful (Subparagraph 1.c). His payments on his \$240,000 home were \$1,879 monthly. When he was unable to modify his mortgage, he filed Chapter 13 bankruptcy to accomplish some financial relief and try again to get a modification. He also tried in 2006 to modify his mortgage, was unsuccessful, and filed a Chapter 13 bankruptcy then to give himself some financial relief (Subparagraph 1.b). (Tr. 32-37, 39, 41, 63; Exhibits 3, A, B, D to L)

Applicant lost a prior home in 2002. He rented a residence for two years, and then purchased his current home in 2004. (Tr. 61)

Applicant pays his monthly bills currently, has no savings account, no car payments because he buys aged used cars for which he pays cash, and does not have any credit cards. He uses a debit card tied to his checking account. His income taxes are all currently filed and paid. His credit reports in the record do not show excessive spending during the 2009 to 2014 period. (Tr. 31, 39, 57; Exhibits 4-6)

Applicant also owed \$96 on a medical account dating from 2009 (Subparagraph 1.d). He contends the account is closed because he paid it during one of his physician visits. He does not have any documentary proof of payment. This small account is resolved. It does not appear on the latest credit report from October 2014 in the record. (Tr. 63, 64; Exhibits 4-6)

Applicant owed \$507 on an ambulance bill dating from 2008 (Subparagraph 1.e). He paid this debt in three installments with his debit card and completed it in August 2014. This debt does not appear on the most current credit report in the record dating from October 2014. This debt is resolved. (Tr. 68; Exhibits 4-6)

Applicant submitted his employee evaluations from 2010 to 2014. They show he meets his goals annually. His supervisors rate him as meeting or exceeding expectations. Applicant also submitted two character statements from co-workers that write Applicant is an excellent worker and dedicated to his work. He also received a company award in 2015 for superior customer service. (Exhibits S to X)

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 useful 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 (AG ¶ 2(a)). 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." 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. Under Directive ¶ E3.1.15, an "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 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 Executive Order 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 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant has three debts listed in the SOR. One pertains to mortgage arrearages for \$16,899 and two pertain to smaller debts, one for \$96 and the other for \$507. Applicant filed Chapter 13 bankruptcies in 2006 and 2014 to obtain mortgage loan modifications when he could not negotiate with his lender. AG ¶ 19 (a) and (c) are established.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three conditions may be applicable:

(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 lost his job in 2011 from a RIF and was reemployed by the same defense contractor at a salary 15% less than he had previously. He also had significant home repairs to make that cost him money he could have used to pay his \$1,879 mortgage. He also had five surgeries in 2009 that caused him to go on medical leave. He had additional medical problems in late 2012. When on medical leave his income was only 70% of his regular pay, thereby causing him more financial hardship. These changes in his health and income were unexpected, but Applicant acted responsibly during those times by trying to continue to pay his mortgage, seeking financial relief, not spending excessively as shown on his credit reports, and filing Chapter 13 bankruptcy to allow an orderly payment of his debts. AG ¶ 19 (b) is established.

Applicant is paying his debts in an orderly manner currently through the legal method of a Chapter 13 bankruptcy. He made 10 payments to date to the Bankruptcy Trustee on a 5-year plan. Therefore, there are clear indications from the evidence he presented that the financial problems are under control and being resolved. AG ¶ 20 (c) is established.

Applicant paid the two smaller debts listed in the SOR. He did not file a Chapter 7 bankruptcy in 2002. He demonstrated it was his wife alone who did that filing. He used Chapter 13 bankruptcy filings to arrange to pay his debts in an orderly manner over five years and be able to keep his home. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay his delinquent debts.

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 an applicant's conduct and all the 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant does not have large debts. He paid the two smaller debts listed in the SOR. He used Chapter 13 bankruptcy under Federal law to pay his other debts in a regular manner after seeking loan modifications for his mortgage from his lender. These are responsible actions demonstrating Applicant is not trying to evade his financial obligations.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations. I conclude the whole-person concept for Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

PHILIP S. HOWE
Administrative Judge