



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



In the matter of: REDACTED Applicant for Security Clearance)))))	ISCR Case No. 14-03868
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Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Gregory F. Greiner, Esq.

08/21/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by the accumulation of delinquent debt, which he incurred due to matters largely beyond his control. In July 2014, he filed for Chapter 13 bankruptcy and is resolving the debts through a confirmed bankruptcy plan. He has paid on a consistent, monthly basis as required by the plan. He has received financial counseling and manages his personal finances in the manner expected of those granted access to classified information. Clearance is granted.

History of the Case

On January 7, 2015, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR), alleging that his circumstances raised security concerns under the financial considerations guideline.¹ Applicant timely answered the SOR and requested a hearing to establish his eligibility for access to classified information.

¹ This action was taken under Executive Order (E.O.) 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 implemented by DOD on September 1, 2006.

On March 23, 2015, Department Counsel notified the Hearing Office that the Government was ready to proceed. Applicant's hearing was scheduled, with the agreement of the parties, for May 26, 2015. The hearing was convened as scheduled.

At hearing, Department Counsel offered exhibits (Ex.) 1 – 8 and Applicant offered Ex. A – R. All exhibits were admitted into evidence without objection. Applicant and his spouse testified. The hearing transcript (Tr.) was received on June 3, 2015.²

Findings of Fact

After a thorough review of the pleadings, exhibits, and transcript I make the following findings of fact:

Applicant and his spouse have been married for over 10 years, and have two children. He has been working for his current employer since 2013. This is his first application for a security clearance.³

Applicant can trace his financial problems back to the 2006-2007 timeframe. In late summer 2006, Applicant and his spouse purchased a new home shortly before the birth of their second child. They were initially quoted a low five percent interest rate for a conventional 30-year mortgage. But, by the time they were ready to close on the home, the interest rate had increased to seven percent. They decided to accept a one-year adjustable rate mortgage (ARM), expecting to refinance and secure a better loan within a year. At the time, the housing market was soaring and everyone's expectation was that their home's value would appreciate sufficiently to qualify for a much more favorable mortgage loan in a year's time. They put approximately ten percent of the purchase price as a down payment (\$30,000 to \$40,000) on their new single family home. They secured the down payment from the sale of their previous townhouse, which they had owned for over five years and generally paid the mortgage on time.

Applicant's wife gave birth to their second child in the fall of 2006. She suffered serious and long-lasting medical complications related to the birth. She was under the care of a specialist for nearly a year, and still sees a physician to monitor her health. She was unable to return to work as quickly as she had following the birth of their first child. She did not receive any income while on extended maternity leave from her job. She was and continues to be the primary breadwinner. Applicant incurred numerous unreimbursed and expensive medical bills for his wife's care that they were unable to pay on his income alone.⁴ The majority of the SOR debts are medically related.⁵

² Applicant and his spouse requested a joint hearing, because the same facts and issues were raised regarding their clearance eligibilities. I granted their request. See Tr. at 6.

³ Tr. at 18-19; Ex. 1.

⁴ Tr. at 82-88; Ex. 3 at 27, 35.

⁵ Specifically, 21 of the 33 alleged debts are medically related. SOR ¶¶ 1.f – 1.n, 1.p, 1.r – 1.y, 1.aa – 1.bb, 1.dd, and 1.ff.

Applicant's financial situation was further exacerbated by his former employer's unilateral decision to change the terms of his employment from primarily salary based to mostly commissioned based. Applicant was a salesman at the time and his sales were highly seasonal. His former employer made the change in the terms of his employment at the time of the season that sales were traditionally slowest.

Applicant's finances took a further hit in the summer of 2007 when the ARM on his new home changed and his monthly mortgage payments increased. He was unable to refinance his mortgage, as the first signs of the impending housing market collapse started to appear in his locale. He fell behind on his mortgage and other debts. Currently, his home is worth approximately \$40,000 less than what he and his spouse owe on their mortgage.⁶

Applicant secured a federal contracting job that helped stabilize his family's finances. Applicant's change in employment allowed him and his spouse to start repaying their debts. They were able to satisfy a number of credit card debts, but found themselves unable to satisfy all their past-due accounts. They were advised by an attorney to file for bankruptcy. In July 2014, they filed for Chapter 13 bankruptcy and it was confirmed in May 2015. They have consistently paid on time the monthly Chapter 13 debt repayments of between \$940 and \$1,340 through automatic bank withdrawal. As of the hearing, they had paid approximately \$10,000 into the plan. All the SOR debts are included in the Chapter 13 plan, except for:

- (1) the mortgage (SOR 1.d), which Applicant and his spouse are paying;
- (2) a \$40,000 second mortgage (SOR 1.e), which was forgiven by the lender as part of an agreement with the federal government to resolve claims that the lender had engaged in predatory lending practices; and
- (3) a vehicle loan for a used car (SOR ¶ 1.gg), which is not delinquent and payments are being made outside the Chapter 13 plan.⁷

Applicant and his spouse received financial counseling through the Chapter 13 bankruptcy. They have created a family budget that allows them to pay their recurring monthly expenses and bankruptcy payments, while still leaving them with over \$1,000 a month to pay for unexpected expenses.⁸ Applicant's wife testified that how they manage their family's finances has changed after the bankruptcy filing:

We're much more aware obviously and very careful of what we're doing and you know better at, like even with the grocery store we're better with

⁶ Tr. at 20-37, 53-55, 57-65, 82-87, 93-97; Ex. 3 at 8.

⁷ Tr. at 35-38, 40-53, 62-63, 72-77, 92, 97-100; Ex. 8; Ex. M; Ex. N.

⁸ Tr. at 39-40; Ex. L.

coupons. It's the little things we kind of nickel and dime ourselves to make sure that we're on the right path.⁹

Applicant and his spouse are active in their community and their children's after school activities.¹⁰ Numerous individuals who have known Applicant for years, both professionally and socially, submitted letters regarding his trustworthiness, honesty, reliability, and other pertinent character traits.¹¹ His former employer writes that Applicant followed and was conscientious in following security rules and regulations.¹²

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants 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.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). 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.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, 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." Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the paramount importance of protecting national security in all suitability determinations, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.¹³

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

⁹ Tr. at 92.

¹⁰ Tr. at 55-57, 94-95; Ex. E; Ex. G, Ex. I.

¹¹ Ex. D – K; Ex. R.

¹² Ex. D.

¹³ See *also* ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) ("Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.").

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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is explained at 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.

Applicant’s accumulation of delinquent debt raises the financial considerations security concern. The record evidence raises the disqualifying conditions at AG ¶¶ 19(a), “inability or unwillingness to satisfy debts;” and 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions are potentially raised by the evidence:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated 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 and provides documented proof to substantiate the basis of the dispute.

Applicant and his spouse experienced a period of financial turmoil that was primarily due to matters beyond their control. Notably, high medical expenses associated with serious medical complications upon the birth of their second child and the loss of his spouse's income because she was forced to take extended maternity leave. It took them a long time to get back on their feet financially due, in part, to several other matters beyond their control, including the recession. However, after Applicant secured good employment, they started to tackle their past-due debts. Over a year ago, they filed for Chapter 13 bankruptcy to resolve all their past-due debts and have established a track record of debt repayment. They also submitted documentation showing that one of the major debts listed on the SOR was forgiven due to the creditor's predatory lending practices. Applicant and his spouse have received financial counseling. Following such counseling, they established a detailed family budget and manage their finances in the manner expected of those granted access to classified information. AG ¶¶ 20(a) through 20(e) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).¹⁴ Applicant's past financial problems were primarily a consequence of matters beyond his control. Although it took Applicant some time to address his troubled finances, he and his spouse have taken control of their finances. Additionally, the information provided by his character references provides sufficient assurance that he will handle and safeguard classified information in a responsible and conscientious manner. Overall, the record evidence leaves me with no questions or doubts about his eligibility for a security clearance.

Formal Findings

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

Subparagraphs 1.a – 1.gg: **For Applicant**

¹⁴ The non-exhaustive list of adjudicative factors are: (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.

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge