



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



In the matter of:)	
)	
)	ISCR Case No. 14-06038
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

10/21/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations and handling protected information security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 19, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations) and K (handling protected information). 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 April 4, 2015, and requested a hearing before an administrative judge. The case was assigned to me on June 23, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 2, 2015, scheduling the hearing for July 21, 2015. The hearing was convened as scheduled. Department Counsel called one witness and submitted Government Exhibits

(GE) 1 through 6, which were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through K, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted an e-mail that was marked AE L and admitted without objection. DOHA received the hearing transcript (Tr.) on July 29, 2015.

Findings of Fact

Applicant is a 59-year-old employee of a defense contractor. He has worked for his current employer since 2000. He worked for another defense contractor for almost 20 years before he accepted his current job. He served in the U.S. military, on active duty or in the reserves, from 1979 until he was honorably discharged in 2001. He has held a security clearance for more than 30 years. He has a bachelor's degree. He is married with six children.¹

Applicant developed financial problems in the mid to late 2000s. His children had expensive dental work, and one of his children had legal problems. He had costly home and auto repairs. Applicant and his wife both had extensive medical problems. He had difficulty paying his mortgage loan. He filed a Chapter 13 bankruptcy case in May 2010. He paid a total of \$45,498 into the bankruptcy plan before the case was dismissed in January 2012. Applicant's home was lost to foreclosure after the bankruptcy was dismissed. There is no indication of a deficiency owed on the mortgage loan.²

The SOR alleges four delinquent debts totaling \$1,431 and the Chapter 13 bankruptcy case. Applicant submitted evidence that he paid or is paying three of the debts. The only debt he has not addressed is an unidentified \$50 medical debt that was listed on a September 2014 credit report. He was unable to locate the holder of the medical debt. He indicated that his finances are not great, but they are getting better.³

Applicant was the custodian of a secure cabinet in a secure lab. In January 2012, Applicant and a security person did an inventory of the cabinet and inadvertently left a classified board on the rack beside the cabinet. Although it was a secure lab, the board still had to be maintained in the cabinet. The classified board was discovered during an inspection not too long after the inventory. It was determined that there was no risk of compromise. Applicant was removed as custodian of the cabinet, and he was given a verbal warning.⁴

Applicant had ongoing medical problems in 2012. He felt barely well enough to go to work. In March 2012, Applicant was working in a different secure lab. He was told by the lab custodian that he had "open/close" for the lab, which meant he should have

¹ Tr. at 67, 81-82; GE 1, 2.

² Tr. at 54-63, 73-74; Applicant's response to SOR; GE 1-3, 5.

³ Tr. at 62-63, 73-79; Applicant's response to SOR; GE 2, 4; AE D, F, G.

⁴ Tr. at 31-34, 71-73, 85-87, 92; Applicant's response to SOR; GE 2; AE B, I.

had the ability to lock the lab and set the alarm. The person responsible for the lab left at about 6:00 p.m. and turned the lab over to Applicant, who was the only person left in the lab. Applicant finished his work about 45 minutes later and attempted to close the lab. The procedures for securing the lab required that the lab be locked and the alarm set. Applicant was able to lock the lab, but he was unable to set the alarm.⁵

Applicant called the contacts listed on the door of the lab, but was only able to reach their voice mails. He then called security who told him to keep calling the contacts and that he would have to stay in the lab until someone who could activate the alarm showed up. He called the contacts again to no avail and he also called security again. He did not think that he would receive any help from the contacts, and he thought he might have to stay in the lab all night, with no bathroom or a place to sleep. He called security after about an hour of attempting to contact someone and told them that he was leaving. When he opened the door to leave a security guard was outside the lab. The guard told him that if he left without setting the alarm he would receive a security violation. Applicant locked the lab and went home. One of the contacts on the door went to the lab about an hour and a half after Applicant left and activated the alarm.⁶

Applicant received a verbal reprimand for his action. He admitted that he reacted to the situation badly, but he believes that his action was reasonable under the circumstances. He stated that he was not feeling well, and that he was able to make it through a nine-hour shift, but he did not think that he could last until morning.⁷ He wrote in his response to the SOR:

The incident did not result in a data spill. I left the lab in a secure state (security guard outside the door). This whole episode did not have to happen. I still don't see where posting a guard at the door after I made a good faith attempt to solve the problem wouldn't have been a reasonable thing to do. Just for the record, I have had security clearances for decades and have not compromised secure data.

Applicant admitted that he never told the security guards that he was sick. He testified that he should have reacted differently, but he stated that there was no security spill and that "it shouldn't have been anything in [his] estimation. But if it had to be something, an infraction."⁸ He stated that if something similar happened again, he "would sit in the lab until somebody showed up."⁹

⁵ Tr. at 38-54, 87-92; Applicant's response to SOR; GE 3, 6; AE C, E, J.

⁶ Tr. at 38-54, 63-67, 91-92; Applicant's response to SOR; GE 3, 6; AE C, E.

⁷ Tr. at 90-91; Applicant's response to SOR; AE C, E.

⁸ Applicant was concerned that his company considered his conduct to be a security violation, when he believed it should have been designated a security infraction. I informed him that I would make an independent decision about its security significance.

⁹ Tr. at 49-54, 69-71, 82; AE C, E.

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 had 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's children had expensive dental work, and one of his children had legal problems. He had costly home and auto repairs. Applicant and his wife both had extensive medical problems. Applicant's financial problems were mostly beyond his

control. He paid a total of \$45,498 into the Chapter 13 bankruptcy plan before the case was dismissed in January 2012. He paid or is paying three of the four debts alleged in the SOR. He was unable to locate the holder of the unidentified \$50 medical debt that was listed on a September 2014 credit report.

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. All of the above mitigating conditions are applicable.

Guideline K, Handling Protected Information

The security concern for handling protected information is set out in AG ¶ 33:

Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

AG ¶ 34 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(g) any failure to comply with rules for the protection of classified or other sensitive information.

In January 2012, Applicant and a security person did an inventory of a secure cabinet and inadvertently left a classified board on the rack beside the cabinet. In March 2012, Applicant locked a secure lab and left without setting the alarm. AG ¶ 34(g) is applicable.

Conditions that could mitigate handling protected information security concerns are provided under AG ¶ 35. The following are potentially applicable:

(a) so much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities.

The first incident was an honest mistake that could have happened to almost anyone. However, it put Applicant on notice, and he should have exercised more care during the second incident. Applicant was ill and had already worked a long day when he tried to secure the lab before going home. He called the contacts listed on the door

of the lab, but was only able to reach their voice mails. Security personnel were unable to assist him and told him to wait until someone showed up who could set the alarm.

Applicant admittedly reacted poorly and left the lab with a guard standing outside. He abrogated his responsibility to ensure the lab was secure to the guard standing outside the door. Nonetheless, this was the only significant security infraction in more than 30 years. There was no chance of a compromise. There has been no indication of any additional problems in more than three years. Applicant stated he regrets the incident and that if something similar happened again, he “would sit in the lab until somebody showed up.” Both mitigating conditions are applicable.

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 F and K in my whole-person analysis.

I considered Applicant’s honorable military service and his long employment with defense contractors while holding a security clearance. Applicant’s actions were serious. Security violations and infractions are some of the strongest possible reasons for denying or revoking access to classified information, as they raise very serious questions about an applicant’s suitability for access to classified information. Once it is established that an applicant has committed a security violation or infraction, he has a very heavy burden of demonstrating that he should be entrusted with classified information. Because security violations and infractions strike at the very heart of the industrial security program, an administrative judge must give any claims of reform and rehabilitation strict scrutiny. In many security clearance cases, applicants are denied a clearance for having an indicator of a risk that they might commit a security violation or infraction (e.g., alcohol abuse, delinquent debts, or drug use). Security violation and

infraction cases reveal more than simply an indicator of risk.¹⁰ The frequency and duration of the security violations and infractions are also aggravating factors.¹¹

Nonetheless, this was one significant security infraction in more than 30 years of holding a security clearance. I further believe the experience of going through the adjudicative process had an additional value, in that Applicant is cognizant that he must be more diligent in his responsibilities for safeguarding classified information. He has met his heavy burden of demonstrating that it is clearly consistent with the national interest to continue his security clearance.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations and handling protected information 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:

Paragraph 1, Guideline K:	For Applicant
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline F:	For Applicant
Subparagraphs 2.a-2.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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge

¹⁰ ISCR Case No. 03-26888 (App. Bd. Oct. 5, 2006).

¹¹ ISCR Case No. 97-0435 at 5 (App. Bd. July 14, 1998).