



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



In the matter of:)
)
) ISCR Case No. 15-00987
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On August 18, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline 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 October 3, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on December 21, 2015. 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

received the FORM on December 29, 2015. He responded with a letter and bankruptcy documents that I have marked Applicant's Exhibits (AE) A and B. The case was assigned to me on February 8, 2016. The Government exhibits included in the FORM and AE A and B are admitted without objection.

Findings of Fact

Applicant is a 31-year-old employee of a defense contractor. He has worked for his current employer since May 2014. He served in the U.S. military from 2003 until he was honorably discharged in 2010. He attended a technical school and college without earning a degree. He married in 2008, separated in 2012, and divorced in 2014. He has a minor child.¹

Applicant was unemployed from May 2013 until he was hired by his current employer in May 2014. The unemployment, along with his separation, divorce, and being a single parent without the aid of child support, created financial problems. It appears that Applicant's ex-wife now has custody of their child.²

Applicant decided his best recourse was to handle his debts through bankruptcy. He filed a Chapter 7 bankruptcy case in June 2015. Under Schedule D, Creditors Holding Secured Claims, the petition listed \$8,641 for a car loan. The petition listed \$306 owed in child support to Applicant's ex-wife under Schedule E, Creditors Holding Unsecured Priority Claims. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed debts totaling \$61,190, which included \$16,232 for a student loan. Applicant's dischargeable debts were discharged in September 2015. The court noted that domestic support obligations and most student loans are not discharged in a Chapter 7 bankruptcy case.³

The SOR alleges the Chapter 7 bankruptcy case, which was not completed when the SOR was issued, and nine delinquent debts totaling about \$22,300. Applicant denied owing the debts, indicating that his Chapter 7 bankruptcy case was final.⁴

All of the debts alleged in the SOR were listed in the bankruptcy petition, except for the \$98 medical debt alleged in SOR ¶ 1.d. The debt is not specifically listed under the collection company named in the SOR. Applicant stated it was listed in the bankruptcy petition under the medical center that was the original creditor. The bankruptcy discharged all the debts alleged in the SOR with the exception of the \$238 debt to the Department of Veterans Affairs, which was paid in February 2015. Before he filed the bankruptcy case, Applicant paid other debts that were not alleged in the SOR.⁵

¹ Item 3.

² Items 2-6; AE A.

³ Items 2; AE B.

⁴ Item 2.

⁵ Items 3-6; AE B.

Applicant received financial counseling as a requirement of his bankruptcy case. His student loans were deferred, but they will still have to be paid, as will any child support. Applicant is gainfully employed; he receives benefits from the Department of Veterans Affairs; and his divorce and bankruptcy are behind him. His financial problems have been resolved.⁶

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

⁶ Items 3-6; AE B.

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 was unable or unwilling to pay his debts. 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 financial problems were caused by his unemployment, separation, divorce, and being a single parent without the aid of child support. He acted responsibly under the circumstances and resolved his financial problems through the legal remedy of a Chapter 7 bankruptcy case. A fundamental goal of the federal bankruptcy laws enacted by Congress is to give debtors a financial "fresh start" from burdensome debts.⁷ The Supreme Court made this point about the purpose of the bankruptcy laws in a 1934 decision:

[I]t gives to the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.⁸

AG ¶ 20(b) is applicable. Applicant's resolution of his debts through Chapter 7 bankruptcy does not qualify as a good-faith effort to repay overdue creditors or otherwise resolve debts.⁹ AG ¶ 20(d) is not applicable. However, through the bankruptcy, the problem has been resolved and is under control. AG ¶ 20(c) is applicable. AG ¶ 20(a) is only partially applicable because of the recency of the bankruptcy discharge.

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

⁷ See <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Process.aspx>.

⁸ *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

⁹ See ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

under Guideline F in this whole-person analysis. I also considered Applicant's honorable military service.

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 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 F:	For Applicant
Subparagraphs 1.a-1.j:	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.

Edward W. Loughran
Administrative Judge