



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



In the matter of:)
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)
)
Applicant for Security Clearance)

ISCR Case No. 15-01796

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

05/25/2016

Decision

CERVI, Gregg A., Administrative Judge:

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

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86) on September 24, 2012. On September 27, 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 22, 2015, and requested a hearing before an administrative judge. The case was assigned to me on February 25, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

March 4, 2016, and a hearing was scheduled for March 30, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through H, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 6, 2016.

Findings of Fact

The SOR alleged four delinquent debts, including a federal tax debt totaling approximately \$18,000 for tax year 2008. The remaining debts alleged total less than \$600. Applicant denied each SOR allegation and provided a short explanation and supporting documents with his Answer. After a careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 41 years old and is employed by a government contractor as a program manager since 2012. He currently earns approximately \$143,000 annually¹ and his spouse earns approximately \$3,600 annually.² He graduated from college in 1997. He currently holds a security clearance and is requesting that it be renewed. Applicant was divorced in 2005, but remarried in 2014. He has two children under four years old.

Applicant's financial problems that led to his federal tax delinquencies began in approximately 2007 when he struggled financially after moving to a high-cost Washington D.C. area for a new job opportunity. In order to sell his home, he incurred costs of renovation, but the property lost substantial value during the 2008 housing crisis. He attempted a short-sale, but was unsuccessful and the mortgage was eventually foreclosed. Applicant paid a negotiated deficiency balance owed on the mortgage.³

In order to meet his increased costs and credit card debts, Applicant withdrew approximately \$19,000 from his retirement account without paying the additional tax and penalties from the proceeds. Applicant believed his 2008 taxes were filed by his accountant, but was eventually notified by the Internal Revenue Service (IRS) of his failure to file and taxes owed. He did not have the funds to pay the taxes owed. He eventually filed his 2008 and 2009 tax returns in 2012, and made arrangements with the IRS to pay his delinquent tax debt through a payment plan to forestall garnishment. Applicant has been consistently paying his monthly installments pursuant to this plan since 2012, and currently owes less than \$12,000, including penalties and interest.⁴

¹ AE D.

² Tr. 40.

³ The foreclosure was not alleged in the SOR.

⁴ AE H.

The remaining debts alleged in the SOR have been resolved. The debts alleged in SOR ¶ 1.b and ¶ 1.c are a collection account for a consumer credit account. Applicant provided evidence to show the SOR allegations are duplicates and that the debt was paid in 2012.⁵ The debt alleged in SOR ¶ 1.d is alleged to be a delinquent natural gas bill, however Applicant has provided evidence from the creditor to show that this account is in good standing, and the debt has been withdrawn from his credit bureau reports (CBR) pursuant to his dispute of the item.⁶

Applicant's income has increased substantially since 2008 and his spouse now contributes to the family income. He is current on all debts and expenses and his current CBR shows no new delinquencies.⁷ He provided a 2014 Letter of Appreciation from his government client and a 2013 citation for Employee of the Month.⁸

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 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(a), 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.

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 clearance decision.⁹ In *Department of Navy v. Egan*¹⁰, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹¹

⁵ AE F and G.

⁶ AE A.

⁷ AE A.

⁸ AE B and C.

⁹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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.” It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.” Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.¹²

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;

¹⁰ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹¹ *Egan*, 484 U.S. at 531.

¹² *Egan*, 484 U.S. at 531.

(c) a history of not meeting financial obligations.

Applicant failed to file and pay his 2008 and 2009 taxes on time and had one other unpaid collection account. 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant attributes his past financial difficulties to a period where he was overextended due to an out-of-state move for a job opportunity, and a downturn in the housing market. He has since worked steadily to improve his financial condition, paid debts, and is well on his way to paying his tax delinquency through an IRS- approved payment plan. He has worked for his current employer since 2012 and his income has increased by a significant amount. He appears to have sufficient income to meet his financial obligations, including continuing to pay his tax arrears.

Applicant has made good-faith efforts to address his debts, including establishing and paying his tax obligation through a repayment plan since 2012. In addition, he satisfied his only remaining consumer debt in 2012 and satisfactorily disputed the small natural gas provider debt. His recent CBR shows that he is current on all financial obligations, and has established a track record of responsible use of credit and timely payment of his financial obligations.

There is sufficient evidence to determine that Applicant's financial obligations have been or are being resolved. I am persuaded that he acted responsibly under the circumstances to take action to address his debts once he was financially solvent, and is making significant progress on his federal tax obligation. I am convinced that he will continue his efforts to stay financially solvent and will address his future financial obligations in a responsible manner. Financial concerns are mitigated under AG ¶¶ 20(a) and 20(d).

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.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such

debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.¹³

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis. I have also considered Applicant's stable work history, positive employment awards, and efforts taken to address his debts.

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.d:	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.

Gregg A. Cervi
Administrative Judge

¹³ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).