



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



In the matter of:)	
)	
)	ISCR Case No. 15-02569
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

06/13/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations and refuted the security concerns under Guideline E, personal conduct. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On October 19, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The action was taken under Executive Order 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on November 10, 2015, and requested a hearing before an administrative judge. The case was assigned to me on March 31, 2016. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 21, 2016. I convened the hearing as scheduled on May 10, 2016. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Applicant testified and offered Applicant's exhibits (AE) A through C, which were admitted into evidence without objection. The record was held open until May 24, 2016, to allow Applicant to submit additional documents, which he did. They were marked AE D through M and admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on May 18, 2016.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.b through 1.f and denied ¶¶ 1.a and 1.g. He did not respond to SOR ¶ 2.a, and it will therefore be considered a denial. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 59 years old. He earned college credits, but not a degree. He was married from 1984 to 2012. He has an adult son. He has been self-employed since 1991. He has had contracts with the federal government since 1996 for different jobs that require a security clearance.²

Applicant attributes his financial difficulties to his divorce. He indicated he was "blindsided" when his wife left him. He worked overseas and his wife was responsible for handling the family's finances. Because he was self-employed she was to pay the bills and his quarterly taxes to the federal government. He credibly testified that she incurred debts jointly that he was unaware of. The SOR alleges that Applicant falsified material facts on his security clearance application of December 2012 when he did not disclose he had debts in collection; accounts suspended or charged off; accounts cancelled for failing to pay as agreed; or accounts that were more than 120 days delinquent. Applicant disclosed in his SCA that he owed a tax debt to the Internal Revenue Service (IRS). When interviewed by a government investigator in February 2013, he disclosed there may be debts attributed to him that he was unaware of because when his wife left there were financial matters that he did not know about. He explained when his wife left she took all of the tax documents, checkbooks, and other financial paperwork. He stated he had not written a check in over 20 years and did not know for months what was owed to creditors. I found Applicant's testimony credible. Credit Reports from June 2014 and March 2015 substantiate the debts alleged in the SOR.³

Applicant testified that in 2011 when he completed his 2010 federal income tax return he became aware that his wife did not pay their quarterly taxes. He contacted the

¹ Hearing Exhibit I is Department Counsel's memorandum.

² Tr. 19-21, 34-36; GE 1.

³ Tr. 33-34, 64; GE 2, 4.

IRS and entered into an installment agreement in the summer of 2011 to pay the taxes owed that were about \$9,000. He made monthly installment payments and subsequent tax-year refunds were also applied to the balance. Applicant provided documents that substantiate his payments and that he made his final payment to the IRS in February 2016 to resolve his tax debt. He timely filed and paid his state and federal taxes for subsequent years.⁴

Applicant disputed the credit card account alleged in SOR ¶ 1.a (\$10,545) because he never used it and was unaware it was a joint account. He stated his wife used it while they were married. He attempted to resolve the account in 2012 or 2013 while he was trying to get his finances in order subsequent to his divorce. He did not consider the debt to be his responsibility. Post-hearing, he contacted the creditor and made payment arrangements to resolve the debt. He provided documents that support he is resolving this debt.⁵

Applicant credibly testified that he was unaware of the medical debts alleged in the SOR (¶¶ 1.b, \$333; 1.c, \$146; 1.d, \$141; 1.e, \$816; and 1.f, \$275) when he completed his SCA. He believed his medical debts were previously paid, and he had no idea what the debts pertained to. After his hearing he contacted the medical creditors that could be identified in the credit reports. He was advised that the debts in SOR ¶¶ 1.c, 1.d and 1.f did not belong to him. These debts and the debt SOR ¶ 1.b do not identify a specific creditor. Applicant provided documents to show he paid the creditor alleged in SOR ¶ 1.e and the debt is resolved.⁶

Applicant provided letters from banks where he has a loan for his mortgage and a car loan that reflect he is a member in good standing.⁷ He does not have any other delinquent debts. His income fluctuates annually, so he saves in anticipation of a down year. He ensures he has sufficient money in a safety fund so he will always have enough to pay his monthly expenses in the event there is a slow work year.⁸

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 used in evaluating an applicant's eligibility for access to classified information.

⁴ Tr. 37-50, 66-67; GE 1, 2, 3, 4; AE A, D, F, G, H, I.

⁵ Tr. 21-25, 28-29.

⁶ Tr. 25, 29, 51-52; AE J, K, L, M. The amount paid to the creditor in SOR ¶ 1.e was for less than the amount shown in the credit report, but the account is listed as paid in full.

⁷ AE B, C.

⁸ Tr. 52-58.

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. 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 not drawn 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 applicant or proven by Department Counsel and 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 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 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding classified information.⁹

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had delinquent debts, including a tax debt from 2010. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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.

⁹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant had a tax debt because his wife failed to make the quarterly tax payments for their 2010 federal income taxes when he was working overseas. He became aware of the delinquency when he completed his tax return and arranged an installment agreement with the IRS. He has faithfully paid the IRS and resolved the debt. He did not think he should be responsible for a credit card that his wife used, but understands now because it was jointly held, he is required to pay it. He has made arrangements to do so. He was unaware of medical debts that were delinquent and has resolved those that could be identified. Applicant has sufficient funds to pay his debts. His financial issues were a result of his divorce, which was beyond his control. Applicant acted responsibly by immediately arranging an installment agreement with the IRS. Although he did not address most of the other alleged delinquent debts until after his hearing, I found his explanations credible. I find under the circumstances he acted responsibly. I also find that his financial problems are unlikely to recur and do not currently cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(b) apply.

There are clear indications Applicant's financial problems are being resolved and are under control. He has made good-faith efforts to pay or resolve his debts. The credit card debt in SOR ¶ 1.a is the only debt remaining, and he is making payments. AG ¶¶ 20(c) and 20(d) apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct;

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant disclosed he had a tax debt on his SCA. I found his testimony credible that he was unaware that of other delinquent debts because his wife was responsible for paying the bills while he was working overseas. He admitted to the government investigator that there may be debts that his wife incurred that he was unaware of when she left. I do not believe Applicant deliberately omitted or falsified relevant facts on his

SCA. The above disqualifying condition does not apply. Applicant has refuted the personal conduct concerns.

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 Guideline F and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 59 years old. He was married for 28 years and relied on his wife to handle the finances while he worked overseas. He has repaid a tax debt and resolved some medical debts. Although he did not use a joint credit card, he understands he is responsible for paying the debt and has begun to make payments. Applicant is financially solvent and lives within his means. He has met his burden of persuasion. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline and refuted the personal conduct allegation.

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.g:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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 a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge