



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-03276
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire
For Applicant: *Pro se*

08/31/2015

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F and Guideline E. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On July 28, 2014, the Department of Defense (DOD) issued 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; Department of Defense 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.

In a response dated August 16, 2014, Applicant admitted all but one of the allegations raised under Guideline F and denied the sole allegation raised under Guideline E. He also requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on February

4, 2015. DOHA issued a notice of hearing on March 24, 2015, setting the hearing for April 15, 2015. The hearing was convened as scheduled.

The Government offered four documents, which were accepted without objection as exhibits (Exs.) 1-4. Applicant offered testimony and 13 documents, which were accepted as Exs. A-M. The transcript (Tr.) was received on April 24, 2015. On April 27, 2015, Applicant forwarded two documents, accepted without objection, as Exs. N-O. On May 5, 2015, the Government forwarded a file of 10 pages which were received from Applicant to supplement the record. They were accepted as Ex. P without objection. The record was then closed.

Findings of Fact

Applicant is a 60-year-old managing consultant who has worked for the same defense contractor since 2012. He has earned an associate's degree in electrical technology, a bachelor's degree in computer science, and various licensures in real estate. He is married and has three children. He has received financial counseling, which helped him learn "what was the appropriate thing to do to move forward." (Tr. 19)

In May 2005, Applicant left his \$80,000 a year job in the electrical sector. With a souring economy and a recent, widespread wave of layoffs at his company, he feared his job was in jeopardy. He enrolled in the necessary coursework to obtain real estate sales and brokerage licensure as he started an e-commerce business, with which he would be involved through 2011. He knew the transition period to a new field would require a temporary reduction in income. He then started working in the real estate profession in 2006. A downward turn in the real estate market, however, protracted his reduced income. Initially, he only made about \$6,000 a year.

By 2011, Applicant started a second job selling cars in order to slow down or stop his personal economic downward spiral. (Tr. 65) Car sales, however, yielded less income than what he might have earned elsewhere at hourly minimum wage. It did, however, help boost his income to a little over \$60,000 a year. This sum, however, was still insufficient to support his family and meet his obligations. By the end of 2011, he had depleted his savings and he started to fall behind on his mortgage, car loans, utilities, and credit cards. (Tr. 65) He wanted to avoid bankruptcy and honor his obligations, so he continued to search for better-paying opportunities. After much effort, he secured a business-sector job in early 2012 that offered to start him with an annual salary of \$100,000.

With his income increased, Applicant avoided declaring bankruptcy. It also made him capable of catching up on his mortgage, car loans, and utilities. That, along with a court-ordered credit card settlement, was his focus in 2012. (Ex. I; Tr. 10, 33-35)

In 2013, he enrolled in a federally-recognized debt relief program to address his delinquent credit card balances. (Ex. J) it included the delinquent debts at issue in the SOR, as well as the balance owed on the court-ordered settlement. The plan

administrator immediately made contact with all Applicant's creditors, apprising them of Applicant's situation and the program's intention of addressing Applicant's debts. (Exs. N-O; Tr. 67) The program included financial counseling. The program required Applicant to pay it \$800 to \$900 a month for debt repayment. (Tr. 35) At the time, there was no indication any of the creditors would be issuing a 1099C form (Cancellation of Debt) in lieu of participation with the plan's schedule. The program comprised a comprehensive and realistic scheme for methodically satisfying Applicant's debts, and reflected Applicant's commitment to honoring his obligations. (Tr. 66-68)

The debts comprising the SOR allegations are as follows:

1.a – merchant charge card – collection - \$14,560. Ex. A; Tr. 20-21. SATISFIED. This account became delinquent in 2011. For the next year, Applicant kept current on the monthly interest and fee charges. Applicant entered into an agreement under which he would pay this creditor \$606 a month beginning in October 2013 for 12 months. At the end of that period, and upon payment of approximately \$7,300, the balance was cancelled by the creditor through the issuance of a 1099C form for Applicant's 2014 taxes.

1.b – credit card – collection - \$7,079. Ex. B. CANCELLED. Applicant argues that this is the same debt noted at 1.f, below, for \$5,504, but with interest added. (Tr. 8, 29, 68-69) The evidence indicates this assumption is correct. (Tr. 69) The account was turned over to another entity between 2011 and 2012. (Tr. 28) Nothing has been paid on this account. Applicant has been informed that the creditor will be issuing to him a 1099C form for his 2015 taxes.

1.c – credit card – charged off - \$3,473. Ex. C. CANCELLED. Allegations 1.c and 1.d reflect the same creditor. Applicant stopped making payments on this account when it went into collection because Applicant did not have the income to make the payments. The creditor issued a 1099C form to Applicant concerning this balance for tax year 2013. (Tr. 30, 37)

1.d – same creditor as above – charged off - \$6,042. Ex. D. CANCELLED. Applicant stopped making payments on this account when it went into collection because Applicant did not have the income to make the payments. The creditor issued a 1099C form to Applicant concerning this balance for tax year 2013.

1.e – bank card – charged off - \$22,040. Ex. E. CANCELLED. The debt started out as part of the repayment plan, but the creditor ultimately issued to Applicant a 1099C form for tax year 2014.

1.f – credit card – charged off - \$5,504. See 1.b, above. CANCELLED.

1.g – failure to submit federal and state tax filings for 2011 and 2012. Ex. F. FILED. This allegation similarly encompasses the allegation noted at 2.a under the personal conduct guideline. Applicant provided evidence showing federal and state

returns for tax year 2011 were filed in 2013. He was under the misimpression that he had up to three years to file his tax returns since a refund was expected (approximately \$8,000). (Tr. 40) When advised that this information was incorrect, the filings were completed. Returns for tax year 2012 were filed late, in November 2013, after he was granted an extension. (Tr. 44)

For tax years 2013 and 2014, Applicant's tax returns reflect cancellations of debt at line 21 for taxable income, for \$16,458 and \$26,049, respectively. (Exs. F-G) No significant balances are presently reflected on the accounts at issue in his April 2015 credit report. (Ex. L)

Applicant now lives under a budget and within his means. He has no other delinquent debts. He and his wife have minimized extraneous expenses and save more of their income. Applicant now earns about \$109,000 a year. He employs what he learned in financial counseling. His performance appraisals reflect a dedicated worker with a high level of ethics. (Tr. 49-51; Ex. M)

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.

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. 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).

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence purporting to show Applicant was delinquent on multiple debts, amounting to over \$50,000. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required, or the fraudulent filing of the same.

Five conditions could mitigate these finance-related security concerns:

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 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.

As the economy experienced a downward financial spiral beginning in 2005, so, too, did Applicant. From 2005 to 2011, he faced a series of financial obstacles that led him to exhaust his savings. Still, he persisted in trying to find a better-paying job. From the time he found real estate licensure was not an answer to his financial problems, his actions were responsible and diligent in light of the circumstances.

In 2012, Applicant found and accepted a lucrative position in a new field. With this job, he was able to catch up on payments on his mortgage, car loans, utilities, and a court-ordered settlement. The next year, 2013, he turned his efforts directly to addressing his delinquent credit card debts. He discerned that the debt noted in the SOR as 1.f was the same obligation underlying the collection effort noted at 1.b, a conclusion he has since persuasively confirmed with evidence. He received productive financial counseling. Then, Applicant solicited the aid of a well-regarded repayment plan program.

The repayment plan program notified Applicant's creditors of his situation and its intent to satisfy the debts on his behalf. Applicant made timely and regular payments on the plan, which the plan used to make payments to Applicant's creditors. The debt at 1.a was settled, with credit for the amount paid, and the remaining balance was cancelled on a 1099C form. Through no efforts of Applicant or the plan to avoid responsibility for the remainder of the debts at issue, those creditors eventually issued 1099C forms. Applicant included those cancelled debts for 2013 and 2014 on the tax returns for those years as income, and paid taxes on that income. It is too early for Applicant to pay taxes on the 1099C marked for tax year 2015. With these debts addressed, Applicant is now debt-free and living within his means.

Finally, in 2011, Applicant was misinformed as to the requirements for filing tax returns. It was a one-time error and he had no reason to conceal his return. He has since received financial counseling, better understands the tax return process, and now regularly uses an accountant. The delay in his 2012 tax return filing was permitted by the granting of an extension. In light of all the above, I find AG ¶ 20(b)-(e) apply.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, where the significance of conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations is defined ([p]ersonal conduct 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.

Applicant failed to timely file his 2011 federal and state tax returns. He did so because he was under the misunderstanding that one could wait up to three years to file tax returns for years when a tax refund was due. When informed this information was erroneous the following year, he filed the appropriate return. His 2012 federal and state tax returns were filed about six months late, but only after receiving a filing extension.

There is no evidence that Applicant deliberately tried to conceal or defraud by not timely filing his 2011 federal and state tax returns, only that he was the recipient of bad information. Indeed, given that he was owed a substantial refund for 2011, it is hard to fathom what he might have had to gain by purposefully withholding or delaying the filing of his tax returns. As for the 2012 tax filings, extensions are commonly granted and do not suggest falsity or impugn the motives of a taxpayer. Lacking evidence of an intent to deceive, no personal conduct disqualifying condition is raised.

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). 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 incorporated my comments under the two guidelines at issue 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 a mature and credible 60-year-old managing consultant who has worked for the same defense contractor since 2012. He has earned both an associate's and a bachelor's degree. Mid-career, he qualified for the proper licenses needed for real estate sales and brokerage. He is married and has three children.

In 2005, Applicant left his employer in anticipation of being laid off. He sought to enter a new profession. A downturn in the economy haunted his search for a lucrative

position. It was not until 2012 that he found a job with sufficient income to again support his family. In the interim, he economized, received financial counseling, searched diligently to find better-paying professional opportunities, and worked to acquire skills that would make him more marketable in multiple fields.

This process expects that an applicant employ a reasonable strategy or plan to address one's delinquent debts. It then requires documentary evidence that such a plan has been successfully implemented. When Applicant finally found stable and lucrative employment, he spent a year stabilizing his finances and catching up on his mortgage, home loan, utilities, and a court-ordered judgment. He then turned his focus on his delinquent debt at issue by employing the services of a reputable debt repayment program. The program gave notice to his creditors of his situation and its intention to honor his debts. Through no action by Applicant, those creditors ultimately chose to cancel his debts with 1099C forms. In response, Applicant treated those sums as taxable income on his state and federal tax returns. Since finding financial stability in 2012, Applicant has been diligent in his attempts to honor all of his obligations, including ones not noted in the SOR. Today, he is free of delinquent debt and living within his means.

I find that Applicant's plan was effectively implemented. Although his debts were ultimately addressed in a manner different than he originally contemplated, Applicant did his part to see the repayment process through as circumstances changed. Moreover, I find no evidence Applicant intended to commit fraud or falsity in filing his 2011 and 2012 tax returns late. Under these facts, I find that Applicant has mitigated financial considerations and personal conduct 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.g:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 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.

Arthur E. Marshall, Jr.
Administrative Judge