



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



In the matter of:)	
)	
)	ISCR Case No. 14-05526
)	
Applicant for Security Clearance)	

Appearances

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

03/31/2016

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 May 5, 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 May 26, 2015, and requested a hearing before an administrative judge. The case was assigned to me on November 4, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 13, 2015, scheduling the hearing for December 10, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in

evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through F, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted an e-mail and attached documents that were marked AE G through L and admitted without objection. DOHA received the hearing transcript (Tr.) on December 17, 2015.

Findings of Fact

Applicant is a 52-year-old employee of a defense contractor. He served in the U.S. military from 1982 through 1986 and from 1991 until he retired as an E-7 with an honorable discharge in 2007. He deployed to Kuwait or Iraq four times while in the military. He started work for his current employer two months after he retired from the military. He seeks to retain a security clearance. He is a high school graduate. He is married for the third time after his first two marriages ended in divorce in 1998 and 2008.¹ He has an adult child from his first marriage and four minor children from his second marriage.²

Applicant's second wife was awarded custody of their four children in their divorce. Applicant was ordered to pay \$1,426 per month in child support, which equates to \$17,112 annually. He was also ordered to pay an additional \$200 per month until \$2,865 in child support arrearages was paid. The child support was ordered to be paid by garnishment. The garnishment order states that "no more than 50% of the disposable earnings" can be garnished.³

Applicant's civilian salary and military retirement pay have both been subjected to the same garnishment order. His civilian pay has been garnished \$573.80 every two weeks, or \$14,918.80 garnished annually from his civilian pay. Because the child support order exceeds 50% of the disposable earnings from his civilian salary, his military retirement pay is also being garnished.⁴

Applicant's military retirement pay is not being garnished for the difference between the amount ordered and the amount collected from his civilian pay. It is being garnished for the full amount of the child support order, subject to the 50% limitation on his disposable earnings. His retiree account statement shows that his military retirement pay has been subject to monthly garnishments of \$1,421 and \$200, which means the arrearages are still being collected long after they have been paid. The monthly amount actually deducted has been \$916.70. That equals \$11,000.40 garnished annually from his retirement pay.⁵

¹ The divorce was apparently effective in December 2008, but the order was not signed until January 2009.

² Tr. at 9, 20, 27-29, 43, 47; GE 1, 2; AE C.

³ Tr. at 24; GE 1, 2; AE C.

⁴ Tr. at 20-22; AE A-E.

⁵ Tr. at 20-23; AE B, C, E.

With \$14,918.80 collected from his civilian pay and \$11,000.40 collected from his military retirement pay, \$25,919.20 has been garnished annually, which is \$8,807.20 more than the \$17,112 that should have been garnished annually after the arrearages were paid. Applicant was unable to pay all his bills on his reduced income, and a number of debts became delinquent.⁶

The SOR alleges 11 delinquent debts totaling \$48,119; however, for reasons discussed below, the SOR appears to have overstated the amount owed. The SOR alleges an unpaid \$2,363 debt to Applicant's divorce attorney, a \$4,993 credit card debt, three medical debts totaling \$278, and six debts totaling \$40,485 owed to the same credit union.

Applicant denied owing the three delinquent medical debts totaling \$272, which were alleged in SOR ¶¶ 1.d, 1.e, and 1.f. The debts are listed on the January 2014 combined credit report, but not the August 2014 and April 2015 Equifax reports. Applicant's documentation supports his assertion that the debts were paid in 2014.⁷

Applicant had multiple accounts with the credit union in the SOR. Several accounts were reported as paid. Applicant admitted owing four of the six debts alleged in the SOR. He admitted owing the \$8,912 debt alleged in SOR ¶ 1.g. That debt is listed on several credit reports. He admitted owing the debts alleged in SOR ¶¶ 1.i (\$10,000), 1.j (\$10,000), and 1.k (\$8,000), but he did not admit to the amounts owed, which appear to have been overstated in the SOR. Those debts were listed on the credit reports in evidence as charged off, but with \$0 balances. The amounts in the SOR are reflected on the credit reports as the high credit on the accounts. The actual amounts that were charged off were not reported.⁸

SOR ¶ 1.b alleges a \$467 debt to the credit union. Applicant denied owing this debt, stating that the debt was paid. An exact match to this debt is not listed on the January 2014 combined credit report. A debt with this balance is listed on the August 2014 Equifax credit report, but not the April 2015 Equifax report. That report lists six accounts with the credit union as paid or closed. The partial account numbers used in the credit reports make it difficult to differentiate between accounts. Applicant has been paying the credit union without attributing the payments to a specific account for some time. It appears the credit union attributes the payments to a specific account until the account is paid, and then moves to a different account.⁹

Applicant denied owing the delinquent second mortgage loan with the credit union, which is alleged in SOR ¶ 1.h as \$3,106 past due. The credit reports list this as a joint account. Applicant's second wife was awarded their home in the divorce, and she

⁶ Tr. at 32.

⁷ Tr. at 36-38; Applicant's response to SOR; GE 1-5; AE L.

⁸ Tr. at 19, 34, 38-45; Applicant's response to SOR; GE 2-5; AE F, J.

⁹ Tr. at 19-20, 34-45; Applicant's response to SOR; GE 2-5; AE F, I, J.

was obligated to pay the mortgage loans, but she did not. The house was lost to foreclosure. There is no indication that the credit union sought any deficiency on the second mortgage loan from Applicant.¹⁰

Applicant contacted the Defense Finance and Accounting Service (DFAS) about the double garnishment. He was told that they were following the court order. He attempted to have his company decrease the amount garnished for child support. The company informed him that the company could not change or stop the garnishment without a court order. Applicant did not seek assistance from his divorce attorney because he still owed the attorney \$2,363 (down from \$8,000). He went to the attorney after the hearing. The attorney advised him that he will help Applicant after the attorney's fees are paid. Applicant has resumed paying the attorney.¹¹

Applicant received financial counseling. He is making payments toward his debts, but his progress is hampered by being garnished twice for the same child support order. He credibly testified that it will take time, but he will continue to address his debts to the best of his ability.¹²

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

¹⁰ Tr. at 29-33; Applicant's response to SOR; GE 1-5.

¹¹ Tr. at 22-26, 33-36; Applicant's response to SOR; GE 2-5; AE G, H, K.

¹² Tr. at 17-20, 45-46.

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 has delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as 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 has been in a bureaucratic nightmare for years. His civilian salary and military retirement pay have both been subjected to the same garnishment order, resulting in him annually overpaying \$8,807.20. He has been unable to get the order modified. His best option appears to be working with his attorney who would like to be paid the fees that he has been owed for years. Applicant paid three of the debts alleged in the SOR, and he has been paying the credit union. Applicant's financial problems resulted from conditions beyond his control, and he has acted responsibly under the circumstances. It will take time, but I believe that Applicant will increase his payments and eventually pay his debts once his child support muddle is resolved.¹³ AG ¶ 20(b) is applicable. AG ¶¶ 20(a), 20(c), and 20(d) are partially 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

¹³ The Appeal Board reversed a case where the applicant's security clearance was denied, and held that the administrative judge's "decision does not explain why, under the facts of this case, if Applicant had been reasonable in addressing problems rooted in causes beyond his control, the mere fact that it might take him a long time to complete the process was a reason to deny him a clearance." ISCR Case No. 06-25584 at 3 (App. Bd. Apr. 4, 2008); See also ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009) and ISCR Case No. 09-08462 at 4 (App. Bd. May. 31, 2011): "Depending on the facts of a given case, the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern."

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 in my whole-person analysis.

I considered Applicant's honorable military service and particularly his multiple deployments to Kuwait and Iraq. I found Applicant to be honest but overwhelmed by the bureaucracy. I believe he has found the path to reaching his financial goals, which is to pay his lawyer, who will seek to stop the double garnishments. Applicant will then use the extra income, which he should have had for years, to pay 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.k:	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