



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



In the matter of:)	
)	
)	ISCR Case No. 15-01353
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

05/10/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 21, 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 November 7, 2015, and requested a hearing before an administrative judge. The case was assigned to me on January 6, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 12, 2016, scheduling the hearing for February 2, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibit (AE) A through R, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that were marked AE S and T and admitted without objection. DOHA received the hearing transcript (Tr.) on February 9, 2016.

Findings of Fact

Applicant is a 53-year-old engineer employed by a defense contractor. He has worked for his current employer since 2005. He seeks to retain a security clearance, which he has held for about 20 years. He has a bachelor's degree that was awarded in 1995. He is married with a 20-year-old child.¹

Applicant's father-in-law was diagnosed with a terminal illness in 2006. Applicant's wife stopped working and traveled back and forth between their home and her father's home halfway across the country to care for him. Applicant's wife stayed and cared for her mother for about a year after her father passed away in October 2007. Applicant paid his parents-in-law's living expenses and his father-in-law's uncovered medical expenses. Applicant and his wife leased a luxury car in December 2007, with \$639 monthly payments. Applicant overextended his credit. He felt the best way to handle the situation was bankruptcy.²

Applicant and his wife filed a Chapter 13 bankruptcy case in May 2009. Under Schedule D, Creditors Holding Secured Claims, the petition listed \$321,969 in claims, which included a mortgage loan, a home equity loan, and the leased luxury car. The petition listed \$3,000 in attorney's fees under Schedule E, Creditors Holding Unsecured Priority Claims. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed debts totaling \$230,157.³

In November 2009, the bankruptcy court approved a plan that called for 60 monthly payments of \$100 for months 1 to 4, followed by \$199 payments for months 5 to 12, and \$453 payments for months 13 to 60. The total to be paid through the plan was \$23,769. The payments were to begin in June 2009 (payments to the trustee are frequently made under a proposed plan before the plan is approved by the court).⁴

In February 2010, Applicant and his wife moved the bankruptcy court to convert their case to a Chapter 7 bankruptcy. In May 2010, the trustee moved to dismiss the Chapter 13 bankruptcy case based upon bad faith by Applicant and his wife. Among the factors noted by the trustee were:

¹ Tr. at 13-18, 58, 60; GE 1; AE H.

² Tr. at 17-24, 41; Applicant's response to SOR; GE 1; AE G.

³ Tr. at 25-26; GE 2; AE E.

⁴ GE 2.

- Applicant's and his wife's annual income of \$99,186, compared to the median family income in his state for a family of three of about \$57,000.
- Applicant was voluntarily contributing \$484 per month to a retirement plan and repaying \$189 per month to a retirement loan.
- Applicant and his wife were driving a 2008 luxury car with a monthly payment of \$639.
- Applicant and his wife were paying \$518 per month for his mother-in-law's health insurance.
- Applicant's wife incurred \$1,144 in business travel expenses to the state where her mother lived in February 2010 and another \$1,113 in March 2010. It was not clear why Applicant's wife would need to travel monthly to that state to conduct her sales business. The trustee also sought clarification on whether the travel actually involved visits to her mother or other family members for personal reasons.
- Applicant and his wife had managed to accumulate significant retirement funds.
- The case was not necessitated by any sudden calamity, but appeared to be the result of years of overspending.

The bankruptcy court granted the trustee's motion to dismiss for abuse in June 2010.⁵

Applicant submitted a Questionnaire for National Security Positions (SF 86) in June 2014. He reported his Chapter 13 bankruptcy. He reported the amount involved in the bankruptcy was "\$80,000 (Estimated)." He wrote that his debts were discharged in bankruptcy in June 2010. He also wrote the following:

We ended up having to file for bankruptcy, [C]hapter 13 so that we can restart a new life along with being responsible in systematically repaying the creditors for the next 5 years. We felt that the best solution was to file for bankruptcy since amount of the debt was not manageable by our current income due to the loss of my wife's business as [redacted for privacy]. It was a time where we were living on one income. We have since reestablished our credit along with a couple of limited amount of credit cards. Financially, we have been under well management.⁶

The SOR alleges the dismissed Chapter 13 bankruptcy case and seven delinquent debts. Applicant denied all the allegations, stating that the debts had been satisfied. He wrote that the "Chapter 7 bankruptcy was dismissed by the trustee.

⁵ GE 2.

⁶ GE 1.

However, the Chapter 13 bankruptcy discharged my debts, including those cited in the Statement of Reasons.” The debts are listed on a June 2014 credit report, an August 2015 credit report, or both credit reports. Applicant is only listed on the credit reports as an authorized user of the \$5,915 credit card debt alleged in SOR ¶ 1.c. The \$5,713 debt alleged in SOR ¶ 1.e is resolved, as discussed below. The remaining five delinquent debts total about \$84,300.⁷

Applicant testified that his wife handled the family’s finances, and he was unaware that she opened and used so many credit cards in his name. He stated that they made about six payments to the trustee. They moved to convert the bankruptcy case to Chapter 7 because they could not make the \$453 monthly payments. Applicant stated that he did not understand the bankruptcy laws; he did not understand the difference between a dismissal and a discharge; and he thought his debts were discharged. He took over the job of managing the family’s finances about three years ago.⁸

Applicant testified that he paid the \$5,713 credit card debt alleged in SOR ¶ 1.g. “last year [or] a few years ago.” The debt is listed in Applicant’s bankruptcy petition. The credit reports show the account as transferred with a zero balance, and one credit report indicates the debt was paid. It is unclear why Applicant would pay this debt if he believed it was discharged in bankruptcy. However, his mortgage loan is through the same bank. He refinanced his mortgage loan in June 2014 through the bank, and he bought a new car financed through the bank with a \$27,855 loan in July 2014. The bank may have required the debt be paid before refinancing the mortgage loan. This debt is resolved.⁹

In about January 2015, Applicant took a lump-sum payout of his 401(k) retirement account and paid his home equity loan. The home equity loan was not alleged in the SOR and was not delinquent. The June 2014 credit report lists the balance on the home equity loan as \$11,421. The August 2015 credit report lists the loan as paid. With the exception of the \$5,713 credit card debt alleged in SOR ¶ 1.g, Applicant has not paid any of the debts alleged in the SOR. The debts are no longer listed on his credit report, likely because they are past the seven-year reporting period. He stated that he sent letters to the creditors, and he is saving to pay the creditors after they respond to him. He has received financial counseling.¹⁰

Applicant submitted numerous documents and letters attesting to his excellent job performance. He is praised for his moral character, work ethic, honesty, dependability, responsibility, trustworthiness, and integrity.¹¹

⁷ Applicant's response to SOR; GE 3, 4.

⁸ Tr. at 17-36, 43-53.

⁹ Tr. at 54-55; GE 3, 4; AE F, J.

¹⁰ Tr. at 36-43, 53-54, 57-58; GE 3, 4; AE F, I, K-T.

¹¹ AE A-D.

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 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.

Applicant is only an authorized user of the \$5,915 credit card debt alleged in SOR ¶ 1.c. That allegation is concluded for Applicant.

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; 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 attributed his financial difficulties to his father-in-law's illness and death, which necessitated that his wife quit her job and care for her father and then her mother. These circumstances were beyond his control. However, Applicant and his wife leased a luxury car two months after his father-in-law passed away. Applicant and his wife sought to rid themselves of their debts through bankruptcy. They filed a Chapter 13 case and received a favorable plan in which they would only have to pay \$23,769 over 60 monthly payments to resolve more than \$233,000 in unsecured debts.

Applicant and his wife were unsatisfied with the approved plan, and they moved the bankruptcy court to convert their case to a Chapter 7 bankruptcy case. The trustee and the bankruptcy court saw through their bad faith and dismissed their bankruptcy case for abuse. The \$5,713 debt alleged in SOR ¶ 1.e was apparently paid. That allegation is mitigated. Applicant has not paid any of the other debts in the SOR, but he stated that he sent letters to the creditors, and he is saving to pay the creditors after they respond to him. The Appeal Board has held that "intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches." See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

There is insufficient evidence in the record for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b) and 20(c) are partially applicable. AG ¶¶ 20(a), 20(d), and 20(e) are not applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

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 in my whole-person analysis.

I considered Applicant's favorable character evidence and his years of employment with defense contractors. However, he and his wife ran up a mountain of debt, abused the bankruptcy process, and made minimal payments to their creditors.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	Against Applicant
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge