



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



In the matter of:)	
)	
)	ISCR Case No. 14-03170
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: Nicole A. Smith, Esq.

01/16/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On August 25, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on November 11, 2014. A notice of hearing was issued on November 18, 2014, scheduling the hearing for December 19, 2014. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-C, which were admitted without objection. The transcript was received on January 5, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegation under Guideline F.

Applicant is 43 years old. After graduation from high school, he served in the United States Marine Corps from 1989 to 1997, and held a security clearance. He divorced in 2010, and married his current wife in 2011. He has one son and one stepdaughter. He has been employed with his current employer since July 2013. (GX 1) He is currently attending college parttime, but has not yet obtained his degree.

Applicant owned and operated his own business from 2004 until 2012, when the company was acquired. Applicant accepted a position with the new company and was a vice-president from February 2012 until July 2013. (Tr. 13).

The SOR alleges one collection account in the amount of \$36,429. Applicant admits that he owes the debt and intends to pay it. (Tr. 53)

Applicant and his first wife separated in September 2007. During the separation, Applicant left the family home and moved to an apartment. At that time, he believes they had an original balance amount for a credit card of \$8,000. He and his first wife both used the account, but he was the primary card holder. (Tr. 17). From 2007 until 2010, Applicant and his wife argued about how they would address this debt. (Answer to SOR) Applicant wanted his wife to pay some of the debt since she had made many purchases on the account and remained in possession of the items. No agreement was made, and Applicant obtained assistance from a law group who advised him not to pay the bill. The idea was the debts would be consolidated by settlements. (Tr. 27) Applicant had no delinquent credit before the separation. His divorce was finalized in 2010. The credit account alleged in the SOR was not paid. At the hearing, Applicant maintained that he made a "few payments" on the account until 2009. He also acknowledged that he used the credit account to buy some things and to renovate his house. (Tr. 19) He explained that he would make a minimum payment and some "lump sums." (Tr. 20) He did not provide any documentation to support this claim. However, he did settle two other credit accounts, as noted on his security clearance application. (GX 1)

Applicant maintained that the original account holder alleged in SOR 1.a would not agree to settle for a "reasonable amount." To compound the issue, Applicant's first wife took money that Applicant had given her to remain in the family home and, on short notice, demanded that Applicant make the house payment. At that time, the payment was already one month delinquent. Applicant paid the mortgage and he managed to lease the home in 2010. While he encountered some difficulties with tenants, he kept the mortgage current. The mortgage loan payments are current and Applicant has the house in a "lease to own" status since 2012. (Answer to SOR)

Applicant states that the separation, divorce, and home mortgage issue did not allow him to make progress with the credit account alleged in the SOR. The account was purchased by another group. In 2011, he received a letter from a company (CC) to settle the collection account. (Tr. 33) Applicant could not accept the settlement because the company wanted about \$3,000 immediately with monthly payments of \$600. (Tr. 34) Applicant maintained that he paid \$200 in goodfaith by a telephone payment. (Tr. 34) Applicant stated that in the next communication that he had with them, he learned that they sold the account to another company after about one month. He gave the company his bank information to start deducting an amount from his account. However, he then learned that the account was sold again. (Tr. 36)

Applicant contacted the next company (FRS) in 2013. He stated that it took him that long to locate the current collection company. He started negotiations for another settlement agreement. Applicant established a payment plan of five consecutive monthly payments of \$250 and 19 payments of \$500 until July 28, 2015. Applicant made a payment of \$250 in August 2013. (AX A) Applicant is not certain of the date, but at some point, FRS stopped deducting the monthly amount from his account. (Tr. 41) He called them but learned they were no longer in business. (Tr. 42)

Applicant then learned that the account was sold to RSC. He contacted them and received written communication that the account was closed. (AX C) Applicant offered to make a payment on the account, but was told that was not possible. (Tr. 44) Applicant's latest credit report does not show the account. Moreover, the credit reports submitted by the Government and Applicant reflect that the majority of his current accounts reflect "pays as agreed." (GX 2, and 3; AX B)

Applicant and his current wife, who is an accountant, both work. Applicant's annual salary is about \$190,000. Applicant uses a budget. He sought advice from the law firm a few years ago. He lives within his means. He did not want to file for bankruptcy at any point in time. He acknowledged that he has credit cards, but he pays the entire amount each month. He is in a financial position to pay his debts, including the collection account alleged in the SOR.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted he owes the delinquent debt at SOR 1.a. With fees and interest the amount is approximately \$36,429, but the original amount pastdue was about \$24,000. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant has one delinquent debt incurred during a separation and divorce. He settled or paid all other debts that incurred during that time. He even managed to maintain a mortgage payment on the family home after his wife decided not to pay the loan. The financial situation occurred in 2007. Applicant was proactive with his marital debts. He intends to pay the collection account and has made numerous attempts to do so in the past. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) applies.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies. As noted above before his separation and divorce, Applicant was financially stable. He has shown that he acted responsibly by settling debts, seeking legal advice, and attempting to settle this last account. I find that he acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant took steps starting in 2009 to pay some debts. He tried to settle this last account many times and still intends to do so. FC MC 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) applies.

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 43 years old. He served in the military and supports his family. Applicant has held a security clearance. He owned his own company until it was acquired by another company. He now is gainfully employed and earns a good salary. He remarried in 2011 and lives within his means. His credit reports reflect that he pays accounts "as agreed." During the years since his separation and divorce from his first wife, he paid all bills, paid the mortgage on the family home, and settled several delinquent debts. Without the events that occurred beyond his control, he would not have had any difficulties. He has acted responsibly. He continued with his reasonable efforts to pay the collection account in question.

Applicant has shown sound judgment and reliability throughout the years. He has persuaded me that he refuted and mitigated the Government's case concerning security concerns under the financial considerations guideline. He met his burden of proof.

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
Subparagraph 1.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. Clearance is GRANTED.

NOREEN A. LYNCH.
Administrative Judge