



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



In the matter of:)
)
) ISCR Case No. 14-03211
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire
For Applicant: *Pro se*

08/31/2015

Decision

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

Applicant submitted sufficient documentary evidence to mitigate Guideline F security concerns. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On October 31, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns 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 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 received the SOR on November 13, 2014.

In a November 24, 2014, Response to the SOR (SOR Response), Applicant admitted one of 13 allegations raised in the SOR and requested a determination based on the written record. On June 22, 2015, the Government issued a File of Relevant Material (FORM) that contained eight attachments. Applicant responded to the FORM with additional information. The case was assigned to me on August 11, 2015. Based on my review of the case file and submissions, I find Applicant mitigated financial considerations security concerns.

Findings of Fact

Applicant is a 40-year-old employee of a Defense contractor. He earned a bachelor's degree and a master's degree in 2002 and 2007, respectively. He is divorced and has two children. At work, he is praised for his knowledge, reliability, and performance.

In 2008, Applicant and his wife separated. Applicant tried to help his estranged wife live comfortably in their separation, hoping they would reconcile. By the end of the year, it was clear they would divorce. In 2009, Applicant's wife lost her job. By the end of 2009, Applicant found that maintaining two households was financially overwhelming. Consequently, he was left with delinquent debts and the challenge of trying to address them. In 2012, his situation was compounded when his house was hit by a storm, causing \$25,000 in damage. Of that sum, he was responsible for approximately \$4,200.

It is unknown whether Applicant has received financial counseling. He disclosed tax debts, student loans, and other debts on his February 2013 security clearance application (SCA). The 13 debts alleged in the SOR amount to approximately \$142,294. Applicant only admits the first debt cited (1.a) for \$3,300 state tax lien. He disputes that he has a state tax lien from 2006. All but one debt for \$629 (1.b) has been documented as paid or satisfied. He believes the medical debts noted are for services incurred by his children that were not covered by health insurance. He currently lives within his means and uses a budget.

At issue in the SOR are the following delinquent debts:

1.a - \$3,300 state tax lien – Paid. Tax Execution Letter, Response to FORM at 4.

1.b - \$629 – Disputed/Unclear. Applicant argues that this 2006 tax lien was recently paid, but has not yet been withdrawn by the state. While there is no evidence of payment, there is also no entry on Applicant's more recent credit report regarding this lien.

1.c - \$297 medical debt – Paid. Receipt, Response to FORM at 6.

1.d – 1.g \$230, \$59, \$59, \$10 medical debts – Paid. Letter, Item 3, Response to SOR at 10.

1.h - \$80 utilities collection – Paid. Receipt, Response to SOR at 16.

1.i - \$186 medical debt – Settled. Receipt, Response to FORM at 7.

1.j - \$124,975 student loan default – Rehabilitated. Applicant has been in regular and timely payment on these loans since early October 2014. He provided documentation of those payments back to February 2015. Receipt, Response to FORM at 10-11.

1.k - \$8,215 student loan charged off – Rehabilitated. This loan is part of the family of student loans noted above. Receipt, Response to FORM at 10-11.

1.l - \$4,464 auto loan collection – Paid. Receipt, Response to FORM at 12.

1.m - \$75 medical debt – Paid. Letter, Item 3, Response to SOR at 10.

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. 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) (listing multiple prerequisites for access to classified or sensitive information).

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 showing Applicant was delinquent on over \$140,000 in delinquent debts. (SOR 1.a-1.m) This is sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts, and

AG ¶ 19(c) a history of not meeting financial obligations.

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.

Applicant specifically attributed at least some of his delinquent debts to his marital separation and divorce. The evidence tends to support his assertion. Moreover, the scant facts indicate that he acted reasonably at the time, given his efforts to save his marriage and compensate for his wife's lack of income. There is insufficient evidence, however, to attribute his medical debts to services provided to his children on an emergency basis. He provided evidence showing that about half of the delinquent debts at issue were resolved before he received the SOR. He also began repayment of his student loans before the SOR was issued. Although it is unknown whether he has received financial counseling, it is clear that his former financial problem is under control. Finally, although Applicant disputes that the state tax lien at 1.b for approximately \$600 is no longer outstanding, he failed to provide documentary evidence showing that it has been paid. In light of the foregoing, I find that AG ¶ 20(b) - AG ¶ 20(d) apply.

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 guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 40-year-old captain who has earned a master's degree. He is divorced and raising two children. He had numerous delinquent debts noted in his credit report, many of which he attributed to financially hard times during his separation and divorce. He provided evidence that all but one delinquent debt noted in the SOR has been addressed, including many which had been addressed before the SOR was issued. The most significant debt, related to his student loans, has been rehabilitated. His statement that he began repayment on the loans in mid-October 2014 is highlighted by documentary evidence showing regular payments have been timely made since the beginning of this year. Only a disputed state tax lien for about \$600, which Applicant claims was paid too recently to have yet been withdrawn by his state, remains unproven.

Applicant now uses a budget and is living within his means. No new debts have been cited. Although whole-person information is limited, his evidence regarding the delinquent debts at issue is comprehensive and organized in his Response to the FORM. Applicant has demonstrated that his plan for addressing his debts was successful and that his finances are now under control. There is no evidence he has

any adverse finance-related issues at this time. Indeed, the evidence shows that he is now living within his means. I conclude Applicant mitigated 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.m	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