



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



In the matter of:)	
)	
)	ISCR Case No. 14-03510
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

10/30/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. The Statement of Reasons (SOR) alleges he is delinquent on two student loans totaling approximately \$17,000 and five charged-off or collection accounts and a judgement, totaling approximately \$8,000. He mitigated the financial considerations security concerns. Clearance is granted

History of the Case

On October 28, 2014, acting under the relevant Executive Order and Department of Defense (DoD) Directive,¹ the DoD issued a Statement of Reasons detailing financial considerations security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On November 25, 2014, Applicant answered the SOR and requested a hearing. On May 27, 2015, I was assigned the case. On June 18, 2015, the Defense Office of Hearings

¹ Executive Order 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) effective within the DoD on September 1, 2006.

and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on July 10, 2015.

At the hearing, Government's Exhibits (Ex) 1 through 4 and Applicant's Exhibits A through C were admitted without objection. Applicant testified at the hearing. On July 20, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted owing one judgment and denied the remaining delinquent accounts. He did not deny he had incurred the obligations; rather, he stated the accounts had been paid, settled, or were current. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 37-year-old premier field engineer who has worked for a defense contractor since July 2000. (Tr. 16) Directly out of college, he obtained employment with his current employer. (Tr. 28) He seeks to obtain a security clearance. His annual salary is \$115,000 and his take-home pay is approximately \$3,500 every two weeks. (Tr. 25, 34)

In March 2007, Applicant was involved in a vehicle accident, which he asserted was not his fault. (Tr. 17) However, in April 2008, the other party brought a small-claims action and, when Applicant failed to appear, obtained a \$2,824 judgment (SOR 1.a). (Ex. 2, Tr. 17) The judgment remained unsatisfied. (Ex. 2) When discussing the matter with an attorney, it was suggested the best thing would be to allow the passage of time to remove it from his credit report. (Tr. 18) He believed that matter should have been settled by his insurance company and has asked the insurance company to review the claim. Due to the passage of time, the records have been archived. (Tr. 18) Once he has a response from his insurance company, Applicant believes he can move forward on this matter. (Tr. 18)

In March 2013, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). (Ex. 1) He indicated he had financial problems and listed ten delinquent accounts of which six are listed in the SOR. (Ex. 1) His September 2009 credit report lists one judgment, one charged-off account, four past due accounts, seven accounts "paid as agreed," and eleven collection accounts. (Ex. 2)

The credit report lists two accounts with telephone service providers. One is listed as a paid account and the other as disputed with settlement on the account. Five years later, on Applicant's September 2014 credit report, the telephone service accounts are listed as consumer disputed with one account being paid for less than the full balance and the other listed as a paid collection account. (Ex. 3, Tr. 21)

Applicant's September 2014 and March 2015 credits report indicate his two student loans (SOR 1.c and 1.d) were being "paid as agreed." (Tr. 20) As of July 2015, he was current on his student loans. (Ex. A) Monthly payments of \$80 were timely made

for eight months on one account and the monthly payments of \$85 were timely made for twenty months on the other loan. (Ex. 3)

The past-due credit card account (SOR 1.e, \$128 past due) has been paid. (Tr. 21) As of July 2015, correspondence from the creditor indicated there was a zero balance on the account. (Ex. B) His September 2014 credit report also listed a zero balance. (Ex. 3) Applicant's March 2015 credit report indicated the \$656 collection account (SOR 1.h) had been paid, and \$1,751 account of which \$128 was past due (SOR 1.e) had a zero balance. (Ex. C, Tr. 22))

The September 2014 credit report lists a \$4,531 charged-off account (SOR 1.b), which also appears on his March 2015 credit report. (Ex. 3) In Applicant's SOR Answer he stated he had a \$294 scheduled payment for the \$4,531 charged-off account (SOR 1.b). At the date of the hearing, the account was paid. (Tr. 19) His July 2015 credit report indicates the account has been satisfactorily paid. (Ex. C)

The \$1,086 collection account (SOR 1.g) appears on Applicant's September 2013 credit report and is listed as having been opened in January 2010. (Ex. 2) The collection account does not appear on his September 2014, March 2015, or July 2015 credit reports. Applicant believed the debt was paid and he would attempt to get verification from the creditor. (Tr. 21)

Applicant asserts his financial problems resulted from mortgage problems related to the home he purchased in March 2005. (Ex. 2, Tr. 22) The \$116,000 house was 100 percent financed. (Tr. 22) After the first year of ownership, additional fees and amounts were added to his monthly mortgage payments to pay property tax. (Tr. 29, 32) Shortly after purchasing his home, his position with his company changed. He was constantly on the road and never home. (Tr. 30) He acknowledged that, at the time, he was living above his means and not paying attention to his debts.

Applicant obtained some high interest loans to pay his monthly mortgage. (Tr. 23) He was unsuccessful in his attempts to modify his mortgage. (Tr. 23) He was able to obtain a short sale on the home, which addressed the 80 percent first mortgage. (Tr. 24) The creditor of the 20 percent down payment on the house offered a settlement, which Applicant accepted and paid. (Tr. 25, 33)

Following the short sale, the burden of monthly house payments was removed. (Tr. 32) Applicant then started focusing on paying his other delinquent debts. (Tr. 32) For the past two years, he has been doing well financially. (Tr. 26) He has cut back on and reduced expenses. He paid off his car note. (Tr. 33) He now manages his money better and maintains a monthly budget. (Tr. 35, 36) He is not getting calls or letters from creditors demanding payment on delinquent obligations. (Tr. 25) He is current on his apartment rent, utility bills, and student loan payments. (Tr. 26, 27) He has approximately \$40,000 in a 401(k) retirement plan. (Tr. 36)

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 must be considered 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.

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 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 Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. Applicant had an unpaid judgment, two student loans in collection, and five delinquent accounts which totaled approximately \$28,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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;

(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's 2005 purchase of a home, which was 100 percent financed, contributed to his financial problems. He obtained some high interest loans in an attempt to make his monthly mortgage payments. He was able to obtain a short sale on the home after unsuccessful attempts to modify the mortgage. The short sale addressed the 80 percent first mortgage. He was offered a settlement on the second mortgage, which he accepted and paid.

Following the short sale, the burden of house payments was removed. He brought his student loans current. He has made timely payments on one student loan for eight months and on the other for twenty months. He addressed a number of delinquent debts. The only unresolved SOR obligation is the \$2,824 (SOR 1.a) judgment resulting from a vehicle accident. His attorney suggested allowing the judgment to drop off his credit report due to the passage of time. Applicant believes his automobile insurance should have taken care of this matter. He has contacted his insurance company and is awaiting a response.

The purchase of Applicant's home ten years ago and short sale of the home are unlikely to recur. These events do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) has some applicability. He kept in touch with the majority of his creditors and worked out repayment agreements, which he has paid. AG ¶ 20(b) applies.

Under AG ¶ 20(c) and ¶ 20(d), Applicant has paid the majority of the delinquent SOR debts or brought them current. AG ¶ 20(c) and ¶ 20(d) apply. He has yet to address the remaining \$2,824 judgment. Once he received information from his insurance company, he believes he "can move forward on this matter." With a \$115,000 gross annual salary, the remaining delinquent obligation is too small to be a security concern.

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. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The SOR obligations were not luxuries. More than 60 percent of the total SOR debt in question related to his two student loans, which are now current.

Applicant has paid or brought current all but one of his delinquent accounts. The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1)) Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.h: 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.

CLAUDE R. HEINY II
Administrative Judge