



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



In the matter of:)	
)	
)	ISCR Case No. 14-03572
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: [Redacted], Esq.

January 23, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 46-year-old employee of a defense contractor. Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for Financial Considerations. His request for a security clearance is granted.

Statement of the Case

On August 29, 2014, the Department of Defense 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; 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 September 1, 2006.

Applicant answered the SOR on September 26, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on November 13,

2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 13, 2014, scheduling the hearing for December 9, 2014. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 3, which were admitted without objection. Applicant offered Exhibits (AE) A through D, which were admitted without objection. Applicant testified and called one witness. DOHA received the transcript of the hearing (Tr.) on December 18, 2014. The record was left open for Applicant to submit additional exhibits. On January 4, 2015, Applicant presented five additional exhibits marked AE E through AE I. On January 13, 2015, Applicant presented one document marked AE J. On January 20, 2015, Applicant presented AE K. Department Counsel had no objections to AE E through AE K and they were admitted. The record then closed.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. He has worked for his employer since March 2014. He is married and has a 16-year-old son. He possesses a Master's in Business Administration, awarded in 1999. (GE 1; Tr. 86.)

As stated in the SOR, Applicant was alleged to be indebted on 11 delinquent accounts in the approximate total amount of \$36,063. Applicant admitted all of the debts listed in the SOR subparagraphs, with explanations. His debts are found in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 2; GE 3.)

Applicant has been struggling financially due to periods of unemployment and unexpected medical emergencies. Applicant's wife has been on medical disability since 2004 due to fibromyalgia and peripheral neuropathy. In February 2009 Applicant's wife had surgery that did not heal properly and led to costly medical bills. They were able to make payments on all of their debts at that time, but realized that their bills were mounting. They attempted to reduce their expenditures. In September 2009 Applicant incurred additional financial difficulties when he was laid off from his job. He was out of work for two months. When he found another job, it was out of state and only paid 70% of Applicant's prior salary. The job also did not provide medical benefits to Applicant's spouse or son, both of whom required continuous medical care and costly prescriptions. Applicant commuted 300 miles per day to that job. He had no extra money to pay on delinquencies, but attempted to stay current on his bills. (GE 1; AE F; AE Tr. 23-47.)

In November 2010 Applicant was hired at another company, for a better salary. He moved his family out of their home and into an apartment near his new job. He planned to lease his family home to renters or sell it, but it was vandalized beyond what Applicant could afford to repair after his family moved out. His wife fell severely ill in April 2011 and required hospitalization. In May 2011 Applicant was again laid off. He was unable to find work until September 2011. He worked at that job from September 2011 to January 2012, when he was laid off a third time. He was employed from February 2012 to October 2012, but was then laid off a fourth time. He was hired by a subcontractor into his current position in April 2013 and became a permanent employee of the Government contractor in March 2014. During the period he was a subcontractor,

his wife and son lived in another state and Applicant incurred the additional costs of maintaining two residences. Once he was hired permanently, his family joined him, relieving him of the financial burden of maintaining two residences. His current position fully covers Applicant and his family with health insurance. (Answer; GE 1; AE A; AE F; AE G; AE H; AE I; Tr. 23-47.)

Applicant testified that he was in communication with his creditors, despite his delinquencies, and always intended to repay his accounts. He made payments to his creditors when he could. He closed all of his credit card accounts and elected only to pay cash for purchases. He sold clothing at consignment shops to get money to pay bills. (Tr. 26-27, 42-44, 74.) He further testified:

Once we -- due to all the bills -- trying to make the bills, I sold my wedding ring. My wife sold her wedding ring. We sold all of our gold. One of my fillings came out and I went and got it cleaned and sold that so we could make enough money to pay back doctors' bills, as well as trying to make payments on whatever debt we did have at that time. (Tr. 41.)

While Applicant previously addressed five other accounts, as reflected by his credit reports, he did not have the funds to address his SOR-listed debts until recently. Once he had obtained a permanent job in March 2014, and his family moved in with him alleviating the need to maintain two residences, he immediately enlisted the help of his brother, an attorney, to contact each of his creditors to arrange repayment. Applicant has repaid or made payment arrangements on all of his delinquent debts listed on the SOR. (Tr. 81-82.) He testified that as individual debts are repaid, he intends to increase the amounts of his payments to pay off his remaining debts faster. (Tr. 78-81.) The statuses of his SOR-listed accounts are as follows:

Applicant is indebted on two store credit accounts, held by the same creditor, in the approximate amounts of \$1,251 and \$4,919, as alleged in SOR ¶¶ 1.a and 1.b. These debts have been delinquent since August 2012 and August 2010, respectively. Applicant testified that the creditor merged both debts into one account for repayment. Applicant arranged to pay this creditor \$50 per month until these debts are satisfied. He presented documentation that shows he made two payments to this creditor and intends to continue his monthly payments until these debts are paid in full. These debts are being resolved. (GE 2; AE A; AE C; AE K; Tr. 48-50.)

Applicant is indebted on a delinquent credit card account in the approximate amount of \$4,448, as alleged in SOR ¶ 1.c. This debt has been past due since March 2014. Applicant presented a written settlement agreement, dated November 7, 2014, with this creditor to repay a total of \$1,500 at the rate of \$125 per month. Applicant documented that he made payments in November 2014 and December 2014 to this creditor. He intends to continue making payments, per the agreement, until this debt is satisfied. This debt is being resolved. (GE 2; GE 3; AE A; AE C; AE G; Tr. 50-54.)

Applicant is indebted on a delinquent medical account in the approximate amount of \$460, as alleged in SOR ¶ 1.d. This debt has been past due since July 2009.

Applicant testified that this creditor agreed to accept \$52 per month, until the debt is satisfied. Applicant made his first payment on November 12, 2014, as shown on his bank statement. He made a second \$52 payment on December 30, 2014. This debt is being resolved. (GE 2; AE A; AE C; AE G; Tr. 54-55.)

Applicant was indebted on a delinquent cable account in the approximate amount of \$53, as alleged in SOR ¶ 1.e. This debt has been past due since February 2014. Applicant paid this debt in full on November 5, 2014, as reflected on his bank statement. (GE 2; AE D; Tr. 56-58.)

Applicant is indebted on a delinquent vehicle loan in the approximate amount of \$20,360, as alleged in SOR ¶ 1.f. This debt has been past due since February 2010. The debt represents the remainder owed for the vehicle he voluntarily returned after his wife became sick and he was laid off in 2009. On November 25, 2014, Applicant negotiated a settlement agreement with this creditor. The creditor reduced the debt to \$5,090.21, payable through a down payment of \$292.09 and 23 subsequent monthly payments of approximately \$212. Applicant credibly averred that he made a money order payment to this creditor on December 23, 2014. This debt is being resolved. (GE 2; AE A; AE C; Tr. 59-60.)

Applicant was indebted on a delinquent account in the approximate amount of \$272, as alleged in SOR ¶ 1.g. This debt has been past due since February 2011. Applicant reached a written settlement agreement with this creditor and paid the settlement amount of \$149.98 on November 11, 2014. He provided a copy of his bank statement to verify the payment to this creditor. This debt is resolved. (GE 2; AE A; AE C; Tr. 60-61.)

Applicant is indebted on a delinquent account in the approximate amount of \$521, as alleged in SOR ¶ 1.h. This debt has been past due since February 2014. In September 2014 Applicant agreed to pay this debt at the rate of \$50 per month until it was satisfied in full. He has successfully made his monthly payments to this creditor since September 2014, as documented in his bank statements. This debt is being resolved. (GE 2; AE C; AE G; Tr. 62-63.)

Applicant is indebted on a delinquent account in the approximate amount of \$1,062, as alleged in SOR ¶ 1.i. This debt has been past due since March 2014. Applicant presented a settlement agreement with this creditor, dated December 12, 2014. It shows that the creditor agreed to settle the debt for six payments of \$70.84 to be made January 13, 2015 through June 13, 2015. This debt is being resolved. (GE 2; AE A; AE G.)

Applicant was indebted on a delinquent account in the approximate amount of \$2,599, as alleged in SOR ¶ 1.j. This debt has been past due since November 2010. In November 2014 Applicant agreed to settle this debt for payments of \$333 per month, for three months. He provided documentation that he made each of the payments, as agreed upon. This debt is resolved. (GE 2; AE A; AE C; AE J; AE K; Tr. 70-72.)

Applicant was indebted on a delinquent medical account in the approximate amount of \$118, as alleged in SOR ¶ 1.k. This debt has been past due since October 2013. Applicant resolved this debt on November 13, 2014, as documented on Applicant's bank statement. (GE 2; AE A; AE C; Tr. 72-73.)

Applicant has participated in formal credit counseling, in addition to the legal services and counseling provided by his brother. He has met on-line with a counselor four times. The counseling service helped him create a budget and taught him how to live through cash-only payments. He provided a personal financial questionnaire that was created with the aid of a financial counselor as documentation of his participation in financial counseling. (AE G; Tr. 86-88.)

Applicant is well respected by those that know him. His brother testified that Applicant is "the most honest, straightforward, honorable person [he has] ever met. He is a wonderful husband, a wonderful father, a fantastic brother, son, uncle." (Tr. 94.) Applicant's "Lead" at his employment with the Government contractor wrote a letter on Applicant's behalf that recognized Applicant for his professionalism, candor, and drive for quality and excellence. Another co-worker, in a letter of support, indicated Applicant is deeply loyal to the United States and would never do anything contrary to the security interests of the United States. Applicant's 2014 performance review shows that he consistently exceeds his employer's expectations. (AE E.)

Policies

When evaluating an applicant's suitability for a security clearance, the 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, 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 AG ¶ 2 describing 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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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, as follows:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant’s delinquent debts began accumulating in 2009 when his wife was undergoing extensive medical treatment and he subsequently was laid off from his job. He stopped making payments on his debts when he could not make ends meet. He has a history of debt that he was unable to resolve for a five-year period. The evidence

raises security concerns under both of these conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

Two Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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; and

(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(b) focuses on delinquencies that result from events that an applicant could not control. Several events affected Applicant's ability to maintain financial solvency, including his wife's medical problems and his periods of unemployment and underemployment. These events made it difficult for Applicant to live within his means. Applicant acted responsibly under the circumstances and addressed bills when he could. He is either repaying or has fully repaid each of his debts. Under the circumstances, Applicant acted responsibly. AG ¶ 20(b) applies.

Applicant sought financial guidance and counseling about how to handle the debts from his brother, an attorney, and through independent financial counseling. Applicant's debts are under control, as they are either being repaid or have been repaid. Moreover, Applicant is employed, and has medical insurance for himself and his family. Applicant brought his financial situation under control. AG ¶ 20(c) 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 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant's financial difficulties were caused by factors that were beyond his control. He is an honorable man and diligently tried to resolve his debts through any honest means possible, including selling his personal possessions. Applicant has resolved or is resolving all of his delinquent debt. He has participated in financial counseling. He now lives frugally. He does not have any credit cards. It is unlikely that Applicant will incur future financial problems.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns. I conclude the whole-person analysis for Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge