



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



In the matter of:)	
)	
)	ISCR Case No. 14-03874
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

04/23/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On November 8, 2014, 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 December 1, 2014, and requested a hearing before an administrative judge. The case was assigned to me on February 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 4, 2015, scheduling the hearing for March 30, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through G, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 7, 2015.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. He has worked for his current employer since February 2014. He is applying for a security clearance. He has two years of college, but he did not earn a degree. He has never married, and he has no children.¹

Applicant was injured at work on two occasions. He was paid workers' compensation, but there was a dispute over the payment of medical bills. He initiated a lawsuit, which resulted in a \$10,000 settlement. He was unemployed from May 2012 until he obtained his current job in February 2014. He was unable to pay all his bills, and a number of accounts became delinquent.²

The SOR alleges eight delinquent debts with balances totaling about \$25,200. The debts are addressed in the table below.

SOR	AMOUNT	STATUS	EVIDENCE
1.a Bank	\$14,604	Bank issued an IRS Form 1099-C (Cancellation of Debt) in September 2014, which cancelled the debt.	Tr. at 31-33; Response to SOR; AE F.
1.b Auto loan	\$5,481	Deficiency on loan after vehicle was repossessed. Per agreement, paying \$20 per month since December 2014.	Tr. at 33-35; Response to SOR; AE A, G.
1.c Medical debt	\$3,316	Paid December 2014.	Tr. at 35; Response to SOR; AE B.
1.d Collection company/bank	\$930	Paid July 2014.	Tr. at 35-36; Response to SOR; AE D, G.
1.e Collection company/medical debt	\$528	Contacted collection company. No record of account. Debt not listed on most recent credit report.	Tr. at 36-37; Response to SOR; GE 3; AE G.
1.f Collection company/medical debt	\$255	Paid November 2014.	Tr. at 37-38; Response to SOR; AE C, D.

¹ Tr. at 38-39; GE 1.

² Tr. at 23-29; GE 1, 2.

1.g Collection company/medical debt	\$44	Paid October 2014.	Tr. at 37-38; Response to SOR; AE E.
1.h Collection company/medical debt	\$43	Paid November 2014.	Tr. at 37-38; Response to SOR; AE D.

In summary, Applicant paid five debts; the creditor forgave one debt; he successfully disputed owing one debt; and he has been making monthly payments since December 2014 on the last debt.

Applicant stated that with his current employment, his finances are back on track. He has not received formal financial counseling. He is aware that the IRS Form 1099-C can have tax consequences, and he is prepared to address them. He credibly testified that he will continue to pay the remaining debt.³

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

³ Tr. at 30-32, 39-40; AE G.

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:

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

Applicant was unable to pay his financial obligations. The above disqualifying conditions are applicable.

Conditions that could mitigate 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;

(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 was injured at work, and he was unemployed for a substantial period. Of the eight debts alleged in the SOR, Applicant paid five debts; the creditor forgave one debt; he successfully disputed owing one debt; and he has been making monthly payments since December 2014 on the last debt. He credibly testified that he will continue with the payment plan until the debt is paid.

I find that Applicant's financial problems were caused by conditions that were beyond his control. He acted responsibly and made a good-faith effort to pay his debts. There are clear indications that his financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b), 20(c), and 20(d) are applicable. AG ¶ 20(a) is not yet completely applicable because Applicant is still in the process of paying his last debt. AG ¶ 20(e) is applicable to the disputed debt.

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.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated 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: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge