



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



In the matter of:)	
)	
)	ISCR Case No. 14-03976
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

03/27/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On October 17, 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.

On November 21, 2014, Applicant answered the SOR and requested a hearing. The case was assigned to me on February 5, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 18, 2015. I convened the hearing as scheduled on March 10, 2015.

The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through L, which were admitted into evidence without objection. The record was held open until March 20, 2015, to allow Applicant an opportunity to submit additional documents. He submitted AE M through AA, which were admitted without objection, and the record closed.¹ DOHA received the hearing transcript (Tr.) on March 13, 2015.

Findings of Fact

Applicant admitted all of the allegations in the SOR. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 54 years old. He earned some college credits, but not a degree. He was married from 1982 to 2003. He has two grown children. He has worked in his current position with a federal contractor since approximately April 2013.²

Applicant was employed from 1981 to April 2006, when he lost his job due to an argument he had at work. At the time he was dealing with a serious illness and was experiencing a high level of stress. He was very sick, and in April 2007 his colon ruptured. He was told he had a 10% chance of survival. He believed he was going to die. He did not have medical insurance. The recovery was long. He was unemployed until March 2008, when he resumed work even though he was still ill. He worked until February 2009 when the contract ended. He worked from March 2009 to May 2011, until another contract ended. He indicated he was also terminated because he used profanity in the workplace. He was unemployed until January 2012.³

Applicant attempted to obtain some type of government assistance such as welfare and disability due to his medical condition, but was denied. Despite his serious health issues, he was living in his truck. He stated he was starving until he was authorized food stamps.⁴ He repeatedly attempted to get medical insurance when he was employed, but was denied because he had pre-existing conditions.⁵ His medical condition worsened, and he was in and out of the hospital. He was not eligible for medical care provided by the government because he was working. In May 2010, he had a heart attack. After talking with a friend who was a nurse, she directed him to a clinic that provided charity care. He applied for it and was able to have the necessary

¹ Hearing Exhibit I is Department Counsel's memorandum.

² Tr. 37-41.

³ Tr. 42- 65; GE 1.

⁴ AE B.

⁵ AE A is a letter from an insurance company denying Applicant coverage due to his pre-existing condition.

surgery on his colon in 2011.⁶ He had been living with 70% of his intestine outside of his abdominal wall and continued to work in that condition. He was told that the problem was due to complications from his previous colon surgery. He recovered and went back to work.⁷

While Applicant was dealing with his medical conditions, he continued to pay his child support as best he could. When he went back to work, he paid the arrearages. He also paid other bills while he was out of work with his savings. He paid many of his medical bills, but was unable to pay them all. His delinquent debts are confirmed in his credit report.⁸

The debt in SOR ¶ 1.a (\$1,059) was a loan from a bank. Applicant used the money to purchase medicine. After he was employed he went into the bank with \$1,000 in cash to settle the debt, but he was told the debt was charged-off, and the bank could not accept his payment.⁹

The debt in SOR ¶ 1.b (\$9,929) is a medical debt related to a surgery. He contacted the creditor and attempted to negotiate a payment plan He was unsuccessful. He is not able to pay this debt at this time, but intends to pay it in the future.¹⁰

The debt in SOR ¶ 1.c (\$834) is a medical debt. The creditor refused to negotiate a settlement. Applicant was unable to pay it in full, but intends to pay it in the future. It remains unresolved.¹¹

The debt in SOR ¶ 1.d (\$786) is a medical debt. The creditor agreed to accept a settlement to pay the debt for \$500. Applicant paid the settlement in November 2014. He provided a supporting document to verify payment.¹²

The debt in SOR 1.e (\$550) is a medical debt. Applicant made a payment of \$275 in November 2014 and is making monthly payments of \$25 until it is resolved.¹³

⁶ AE C.

⁷ Tr. 42-65; GE 1.

⁸ Tr. 66-68; GE 2.

⁹ Tr. 69-71.

¹⁰ Tr. 71-72, 83; AE A.

¹¹ Tr. 73-74.

¹² Tr. 74-77; AE D, F, M.

¹³ Tr. 76-78; AE D, E, F.

The debts in SOR ¶¶ 1.f through 1.m, and 1.o are to the same creditor and are medical debts. Applicant paid \$1,543 in November 2014 to settle these debts. He paid the debt in SOR ¶ 1.n (\$80) in November 2014. These debts are resolved.¹⁴

The debt in SOR ¶ 1.p (\$34,044) is for the hospital stay when Applicant had a heart attack and did not have medical insurance. He contacted the creditor and told it he was unable to pay the bill at this time. The creditor did not want to negotiate a settlement. The debt is unresolved.¹⁵

Applicant currently has health insurance with full coverage. He believes he cannot be denied health insurance due to his pre-existing conditions under the new federal medical care program. He maintains a budget and provided a copy.¹⁶ He also provided information of other payments he has made to resolve his medical debts since 2012. He has been making small consistent payments to various medical creditors.¹⁷ He is current on all of his other bills. He only has one credit card with a \$500 limit and it is current. He is working full-time. He does not provide support to anyone.¹⁸

Applicant provided character letters from coworkers who describe him as organized, efficient, and an extremely competent worker, who is a capable leader. He can be counted on to complete his work assignments in a timely manner and the quality of his work exceeds expectations. A friend described him as responsible and hard working.¹⁹

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

¹⁴ Tr. 78-81; AE D, E, G.

¹⁵ Tr. 81-82.

¹⁶ AE I.

¹⁷ Tr. 88-90; AE H, I, J, K, P-Z.

¹⁸ Tr. 66-68, 84-87, 96-98.

¹⁹ AE L.

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. 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 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant accumulated numerous delinquent medical debts totaling more than \$49,000 that he was unable to pay until approximately 2014. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant settled or paid the debts in SOR ¶¶ 1.d through 1.o. AG ¶ 20(d) applies to these debts. Applicant acknowledges the remaining debts. He attempted to pay the debt alleged in SOR ¶ 1.a but was unable because it was charged-off and the creditor refused to accept payment. The remaining debts in SOR ¶¶ 1.b, 1.c. and 1.p were incurred when Applicant did not have medical insurance and was unable to obtain it. He had serious medical issues at the time. He has not abandoned these debts, but he is unable to resolve them because the creditors will not accept a settlement payment plan and the balances are beyond his ability to pay the amount in full. Applicant was unemployed for periods of time and did not have medical insurance when he developed serious medical problems and a subsequent medical emergency. He was unable to obtain insurance because of a pre-existing condition. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has been making small consistent payments to

medical creditors since 2012. He has paid or negotiated settlements with many of his medical creditors. He intends to resolve the remaining debts, but is unable at this time. I find Applicant acted responsibly under the circumstances. He has paid most of the debts alleged in the SOR and is making payments to other medical creditors not listed. AG ¶ 20(b) applies.

AG ¶ 20(a) does not apply because Applicant still has delinquent debts to resolve. AG ¶ 20(c) applies because Applicant has paid many medical debts and continues to make consistent payments on other ones. He is working full-time and has medical insurance. Although he still has some medical debts to resolve, there are clear indications the problem is under control. He has no other delinquent debts except those related to his medical problems.

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 is a 54-year-old hardworking man who found himself in a destitute situation because he had a serious medical condition and did not have medical insurance. He was unemployed for a period. After he resumed working, he was denied medical insurance because of his pre-existing conditions. The astronomical costs he was required to pay without insurance caused him to accumulate delinquent medical debts. He has no delinquent debts except those for medical expenses. He has never abandoned his responsibilities and has contacted the creditors. Since resuming work he has paid debts both listed on the SOR and others that were not. He has been slowly

resolving the debts. Although he still has a couple large medical debts that are unpaid, I do not believe he has neglected them or acted irresponsibly. Despite having some debt, it does not create a security concern, as he has established a pattern of addressing them. Overall, the record evidence leaves me with no 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 under the financial considerations guideline.

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.p: 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.

Carol G. Ricciardello
Administrative Judge