



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



In the matter of:)	
)	
)	ISCR Case No. 14-04404
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: [Applicant’s wife], Personal Representative

04/27/2015

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 October 2, 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 October 28, 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 31, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without

objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 6, 2015.

Findings of Fact

Applicant is a 56-year-old employee of a defense contractor. He has worked for his current employer or its parent company since 2000. He served on active duty in the U.S. military in one branch from 1977 through 1981 and in another branch from 1982 until he retired in 1998. He seeks to retain his security clearance, which he has held since about 1982. He has an associate's degree and additional college classes. He married in 1978 and divorced in 1999. He married his current wife in 2003. He has three adult children from his first marriage. He and his wife are raising five children under the age of 17, which includes his stepchild, three children with his wife, and an adopted child.¹

Applicant and his wife overextended themselves in order to finance her in vitro fertilization (IVF) procedures. The expensive procedures were paid by credit cards. His wife became unemployed, and they were unable to maintain the payments on all their accounts.²

The SOR alleges five delinquent debts. The debts in SOR ¶¶ 1.a (\$29,406) and 1.c (\$19,501), and the debts in SOR ¶¶ 1.b (\$9,034) and 1.d (\$8,144), are duplicate accounts. The three non-duplicate accounts total \$46,307. Applicant admitted owing the debts, but he stated that the debt alleged in SOR ¶ 1.e (\$7,867) was settled and paid. The debts are each listed on at least one credit report.

Applicant settled the \$7,867 debt alleged in SOR ¶ 1.e for \$2,300. He paid the settlement amount on October 28, 2014.³

Applicant instituted a payment plan with the collection company alleged in SOR ¶ 1.b (\$9,034) on behalf of the financial institution alleged in SOR ¶ 1.d (\$8,144). He made \$50 payments in December 2014 and January 2015, and a \$200 payment in March 2015.⁴

SOR ¶ 1.a alleges a delinquent debt of \$29,406 to a collection company on behalf of a financial institution. SOR ¶ 1.c alleges the underlying debt to the financial institution. Applicant admitted owing the debt. He has not made any payments toward the debt. Applicant's plan is to continue making the payments toward the debt alleged in SOR ¶ 1.b. He will have additional funds in July 2015 that can be used to increase the

¹ Tr. at 11, 34, 39-41; GE 1, 2.

² Tr. at 11-12, 21, 31-32; GE 1-4.

³ Tr. at 22; Applicant's response to SOR; GE 1-4; AE B.

⁴ Tr. at 23-24, 29-30; Applicant's response to SOR; GE 1-4; AE A, C.

payments or settle the debt. After that debt is resolved, he will move on to the debt alleged in SOR ¶ 1.a. Applicant has a loan against his 401(k) retirement account that will be paid in July 2017. If his debts are not resolved before then, he will take another loan against his 401(k) and pay or settle the debt.⁵

Applicant paid several accounts that were not listed in the SOR. His wife is working. He credibly testified that his finances have improved, and that he will continue to pay the remaining debts. He has not received formal financial counseling, but his wife has a post-graduate degree in business and finance. She handles most of the family's finances and is committed to becoming debt free within a few years.⁶

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 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

⁵ Tr. at 21, 25, 32, 38; Applicant's response to SOR; GE 1-4.

⁶ Tr. at 11, 21, 29, 32-39; GE 1-4.

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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant and his wife used credit cards to pay for her expensive IVF procedures. His wife then lost her job, and they were unable to maintain their payments. His wife is back to work, and they have been working on resolving their debts. They paid debts that were not alleged in the SOR. Of the three non-duplicate debts alleged in the SOR, they paid one debt and established a payment plan for another debt. They both credibly testified that they will continue with the payment plan until the debt is paid or settled, and then they will move on to the final debt.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that Applicant has established a plan to resolve his financial problems, and he has taken significant action to implement that plan. 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(c) and 20(d) are applicable. AG ¶ 20(a) is not yet completely applicable because Applicant is still in the process of paying his debts. AG ¶ 20(b) is not completely applicable because much of Applicant's financial issues relate to his wife's IVF procedures, which were elective on their part.

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.

I considered Applicant's honorable military service, his stable work history, the factors that led to his financial problems, and the steps he has taken to remedy those problems. I am convinced his finances are sufficiently stable to warrant a security clearance.

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.e: 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge