



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



In the matter of:)
)
) ISCR Case No. 14-04962
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie Hess, Esquire, Department Counsel
For Applicant: Sean M. Bigley, Esquire

05/31/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On December 2, 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; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

On February 7, 2015, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On September 18, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was provided to Applicant on October 29, 2015, and it was received on November 16, 2015.

Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object and Items 4 through 7 are admitted into evidence. In response to the FORM, Applicant submitted additional information, which was included in the record without objection.¹ The case was assigned to me on March 15, 2016.

Findings of Fact

Applicant admitted SOR allegations in ¶¶ 1.a, 1.b, and 1.d. He denied the allegations in ¶¶ 1.c and 1.e. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. He attended college, but did not earn a degree. He served in the military from 2001 to 2004 and was deployed to Iraq. He has a 60% service disability. He married in 1998 and divorced in 2005. He remarried in 2007. He has children ages 16, 6, and 2.² He is the managing member of a company he has owned since 2004. He has worked in various jobs from 2004 until he began working for a federal contractor in October 2012.³

Applicant and his brother purchased an apartment complex as a business venture in 2007. Applicant disagreed with the business practices of the mortgage lender, took legal action, and the mortgage lender foreclosed on the property. Applicant indicated that he was financially solvent and able to pay the mortgage payments, but stopped on the advice of his lawyer. He lost the lawsuit and subsequently filed Chapter 11 bankruptcy. The debt is alleged in SOR ¶ 1.a (\$142,888). He has been making consistent and timely payments to the lender of \$4,100 a month in conformance with the bankruptcy order and intends to do so until the debt is repaid in full. The debt is being resolved.⁴

SOR ¶¶ 1.b (\$11,287) and 1.d (\$2,979) are credit card accounts that Applicant used for the business he and his brother jointly owned. He signed a personal guarantee for the credit cards. He and his brother paid down their initial start-up business debts too quickly and exhausted their cash reserves. In 2007 and 2008, the business declined, and they eventually closed their business. Applicant has been paying the debts in SOR

¹ The Response to the FORM included exhibits that were already marked. They are admitted into evidence as marked.

² Item 5. Applicant did not list his youngest child in his security clearance application, but indicated in his response that he has three children and their ages.

³ Item 5.

⁴ Items 4; Response to FORM, attachments AE-D, AE-E, AE E (1).

¶ 1.b since September 2012 and ¶1.d since July 2012, with consistent, albeit small monthly payments of \$40. The creditor has been accepting the payments.⁵

Applicant disputes the credit card debt in SOR ¶1.c (\$6,030). He admitted the credit card became delinquent in 2010, but disputes the amount owed as inaccurate. He believed he owed approximately \$1,500 and the amount alleged was the amount for the highest outstanding balance. He has contacted the creditor to resolve the debt, but did not make payments toward the disputed debt because he did not want to acknowledge the validity of the total amount alleged. He provided state law citations noting the debt is no longer valid or collectable after three years (2013). Applicant provided a letter he wrote to the creditor from 2012 indicating his dispute of the amount owed, requesting an investigation, and his willingness to fully settle the debt for the amount he owed after completion of a satisfactory investigation. Applicant did not receive a response from the creditor.⁶

The debt in SOR ¶ 1.e (\$27,979) is a second mortgage loan Applicant took out on a home owned by him and his first wife. During their divorce they realized they could not sell the property without taking a substantial loss, so they converted the property into rental units. Due to the downturn in the economy in 2007-2008, the units were no longer profitable, and Applicant was unable to refinance or modify the loans, and the property went into foreclosure in 2010. Applicant received a small settlement from a class action law suit filed against the primary lender by a third party for predatory lending practices. Under the state law where the property is located, the second mortgage was subrogated to the first mortgage when the first mortgage was foreclosed upon, thereby eliminating the second mortgage. However, under the state's laws, the second lender had the right to sue for the deficiency amount alleged in SOR ¶ 1.e, but it did not. Applicant obtained a copy of the foreclosure order issued by the judge for the property alleged in SOR ¶ 1.e. The correspondence reflects Applicant did not contest the foreclosure and he was actively working with the lenders to avoid a deficiency judgment. The primary lender worked with Applicant, but the secondary lender failed to answer the petition and was in default. Applicant provided letters showing his attempt to find the second lender to see if there were any funds owed it. He was unable to find the creditor. The statute of limitations on filing suit ran in 2013.⁷

It is noted that credit bureau reports submitted by the government from September 2015 and September 2014, do not reflect the name of the creditor or the successor creditor alleged in SOR ¶ 1.e. There is a delinquent account in the credit bureau reports that is roughly the same amount of the debt alleged under a different name.⁸

⁵ Item 4, attachments B and D; Response to FORM attachments AE F and G.

⁶ Item 4.

⁷ Items 4, 6, 7; Response to FORM, attachments H, I and J.

⁸ Items 6, 7.

Applicant provided character letters. He is described as loyal, respected, courageous, compassionate, fair, professional, talented, dedicated, and a person of great moral character who is a role model.⁹ Applicant provided a personal financial statement that reflects he and his wife have the financial resources to pay their bills. He provided certificates to show he has attended financial counseling.¹⁰

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 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 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 avoided drawing 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

⁹ Response to FORM attachment C.

¹⁰ Item 4.

extrapolation as to 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 relating to the guideline 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 the following under AG ¶ 19:

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

Applicant accumulated delinquent mortgage debts and credit cards from about 2007, which he was unable to resolve. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

- (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;
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.

(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 experienced financial problems after his divorce and in 2007 when his business was affected by an economic downturn. He continues to make payments through a Chapter 11 bankruptcy and with monthly payments for delinquent credit cards. Applicant is financially stable and able to pay his current bills. He has not ignored his delinquent debts. Two of them are no longer enforceable. Given the economic and business circumstances which generated the debts, Applicant's financial problems are unlikely to recur and do not cast doubt on his current reliability, trustworthiness and good judgment. AG ¶ 20(a) applies.

Applicant's divorce and economic downturn were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant is paying the largest debt through a Chapter 11 bankruptcy. He has been making consistent payments. He has been making consistent payments for almost four years on the two delinquent credit card debts. Two debts are no longer enforceable, but Applicant acted responsibly in addressing them. AG ¶ 20(b) applies.

Applicant participated in financial counseling, is paying three of the debts alleged in the SOR. The remaining mortgage debt the lender chose not to pursue the deficiency balance and it is no longer enforceable. There are clear indications that his financial problems are under control. AG ¶¶ 20(c) and 20(d) apply.

Applicant disputed the amount owed to the creditor for the debt alleged in SOR ¶ 1.c. He provided a copy of the letter he sent to the creditor in 2012 that requested it investigate the debt, but received no response. I find Applicant had a legitimate dispute that he attempted to resolve with the creditor. AG ¶ 20(e) 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 the 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 41 years old. He served honorably in the military and deployed to Iraq in 2003-2004. He experienced some financial difficulties after his divorce and as the result of a failed business venture. Applicant has addressed the largest debt for a mortgage loan through Chapter 11 bankruptcy and is making consistent monthly payments. He has been paying two delinquent credit cards since 2012 with monthly payments. The lender on a second mortgage did not participate in the foreclosure proceedings and failed to pursue a potential deficiency. Applicant disputed one debt and the creditor failed to respond. His personal financial statement shows he and his wife are solvent and can meet their financial obligations. Applicant has provided evidence that he did not ignore his debts, but attempted to pursue resolution through legal means. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, 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, 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 grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge