



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-00067
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel
For Applicant: *Pro se*

05/17/2016

Decision

HOGAN, Erin C., Administrative Judge:

On August 26, 2015, 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 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 Department of Defense after September 1, 2006.

On September 29, 2015, Applicant answered the SOR and requested a decision on the record in lieu of a hearing. Department Counsel issued a File of Relevant Material (FORM) on December 16, 2015. Applicant received the FORM on January 7, 2016, and timely submitted a response to the FORM. (Item 8) Department Counsel did not object to Applicant's response to the FORM (Item 9). On February 26, 2016, the FORM was forwarded to the Hearing Office and assigned to me on March 14, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his response to the SOR, Applicant admits the SOR allegations. (Item 2)

Applicant is an employee of a DOD contractor seeking to maintain his security clearance. He has worked for his current employer since November 2013. From 2011 to 2013, he worked as a contractor with the U.S. Army in Afghanistan. From 2003 to 2011, he worked for his current employer. He has a high school diploma. He is married and has two children. He experienced several periods of unemployment from July 2013 to November 2013, October 2011 to November 2011, and April 2004 to September 2004. (Item 3)

On May 21, 2014, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). In response to Section 26, Applicant listed a delinquent mortgage and several other delinquent accounts. (Item 3, section 26) A subsequent background investigation revealed the following delinquent accounts which are alleged in the SOR: a home mortgage foreclosure in January 2009 (SOR ¶ 1.b: Item 2 at 5); a February 2010 home mortgage foreclosure (SOR ¶ 1.c: Item 6 at 5); a \$7,084 account that was placed for collection (SOR ¶ 1.d: Item 6 at 3; Item 7 at 2); a \$3,235 account that was placed for collection (SOR ¶ 1.e: Item 6 at 4; Item 7 at 2) and a \$6,600 credit card account that was charged off and placed for collection. (SOR ¶ 1.f: Item 6 at 3; Item 7 at 2).

Applicant filed for Chapter 13 bankruptcy in March 2010. Total liabilities were listed at \$446,998. The bankruptcy was dismissed in May 2010, because Applicant and his wife failed to show at the First Meeting of the Creditors. (Item 5)

In his response to the SOR, Applicant states that he and his wife encountered financial problems because she was laid off, their mortgage rates increased, and his salary was reduced. They relied on credit cards and savings to make ends meet. He is dependable, hardworking, and takes pride in his work. He would never do anything to jeopardize his job or bring shame to his family or his country. (Item 2 at 3)

With respect to the mortgage foreclosures alleged in SOR ¶¶ 1.b and 1.c, Applicant indicates that he and his wife purchased a home with an adjustable rate mortgage. In 2008, his mortgage payments increased from \$1,612 to \$2,135. Adding taxes and insurance, the mortgage payment was \$2,700 a month. During the same time period, Applicant's monthly income was reduced twice by almost \$900. Struggling to make ends meet, Applicant and his wife contacted their lender requesting mortgage assistance. They were denied assistance because their loan was current. They stopped making payments so that they could apply for assistance and a mortgage modification. They attempted to contact their mortgage company, but the mortgage company did not return their phone calls. The mortgage company foreclosed on the property (SOR ¶ 1.b) (Item 2 at 5-6)

Applicant and his wife hired a law group to assist them with dealing with the foreclosure. In December 2009, the law group informed Applicant and his wife that the sale date of their property was cancelled. During the same time period, the first mortgage company (SOR ¶ 1.b) sold the mortgage to the second mortgage company (SOR ¶ 1.c) In March 2010, Applicant's wife was advised by her employer that she would be laid off in 90 days. (Item 2 at 5-6)

Based on these events, the law group advised Applicant and his wife to file for Chapter 13 bankruptcy. The Chapter 13 was filed on March 19, 2010. Applicant claims the case was dismissed because the repayment plan was for five years and his wife was soon to lose her job. (As mentioned previously, the Chapter 13 paperwork indicates the case was dismissed because Applicant and his wife failed to show at the First Meeting of the Creditors.) Applicant claims filing Chapter 7 was not an option because his wife was still working and her employment was extended until January 2011. (Item 2 at 5-6; Item 5)

Applicant intended to refile for Chapter 13 bankruptcy. He received notification from the court that the law group was the subject of a class action lawsuit by former clients. The law group filed for bankruptcy. They also discovered that the sale of their property was not cancelled. It was sold as scheduled. Applicant now believes hiring United Law Group was a waste of money and time. (Item 2 at 5-6, 11-30)

Applicant provided a document showing that the second mortgage on the property was forgiven by the bank on October 27, 2012. The second mortgage is not alleged in the SOR. (Item 2 at 11) Applicant resides in a state that does not allow a lender to obtain a deficiency judgment after a nonjudicial foreclosure. As a result, a deficiency judgment will not be obtained pertaining to the first mortgage. With regard to the remaining debts alleged in the SOR (SOR ¶¶ 1.d, 1.e, and 1.f), Applicant claims he contacted each creditor, but was unable to locate the current holder of each debt. Applicant intended to continue to research the debts and sent in disputes to the credit reporting agencies. (Item 2 at 7-8)

In his response to the FORM, Applicant indicated that the debts alleged in SOR ¶¶ 1.d and 1.f are the same debt. He provided a receipt from the creditor in SOR ¶ 1.d showing the debt was paid in full on January 22, 2016. It is noted the original creditor does not appear to be the creditor alleged in SOR ¶ 1.f. However, upon further internet research, the original creditor listed on the receipt is a subsidiary of the bank listed in SOR ¶ 1.f. The credit reports and the receipt also list the same account number. SOR ¶ 1.d and SOR ¶ 1.f are the same debt and are resolved. (Item 6 at 3; Item 7 at 2; Item 8 at 2, 4)

Applicant provided proof that debt alleged in SOR ¶ 1.e was satisfied in February 2016. (Item 8 at 3, 6) Although not alleged in the SOR, Applicant disputed another credit card account that appeared on his credit report. The credit card company concluded that he was not an authorized user or the person responsible for the account. (Item 8 at 7) He also contacted the credit reporting agency, provided information, and

requested that the credit reporting agency update the credit report to indicate that a car loan was paid off in 2011. Another department store credit card belongs to his wife. It is not delinquent. (Item 8 at 1)

In 2012, after having worked a year in Afghanistan without seeing his wife, Applicant and his wife went on a two week trip to Europe from May to June 2012. (Item 3 at Section 20c; Item 4 at 4-5) Applicant said that he and his wife could afford the trip at the time they took it. Applicant says that he is a dependable and loyal employee. He requests that he be granted a security clearance so that he can prove that he is a worthy person. (Item 8 at 1)

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 must be considered when determining 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.

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 applicant or proven by Department Counsel. . . ." The applicant 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 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 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 disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations) apply to Applicant's case. Applicant encountered financial problems since about 2008 when the mortgage payments on his adjustable rate mortgage increased from \$1,612 to \$2,135. The mortgage eventually was foreclosed. Applicant also incurred three additional delinquent accounts, with a total balance of approximately \$16,919. Both AG ¶ 19(a) and AG ¶ 19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce

evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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);

AG ¶ 20(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);

AG ¶ 20(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(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts); and

AG ¶ 20(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).

AG ¶ 20(a) and AG ¶ 20(b) apply to Applicant's situation. Applicant suffered a \$900 monthly reduction in his income in 2008. As a result, he and his wife were not prepared for the increase in their mortgage payments. During the same time period, Applicant's wife was notified that she would be laid off. They attempted to save their house by pursuing a loan modification and then filing for bankruptcy, but it was too late. They lost their home to foreclosure. Applicant and his wife followed the advice of a law firm to file for bankruptcy, which, in hindsight, they believe was the wrong approach to resolving their problems. After the bankruptcy was dismissed, Applicant attempted to resolve his remaining delinquent debts on his own. Applicant's financial situation was partially caused by circumstances beyond his control. Overall, I find Applicant acted responsibly under the circumstances because he attempted to resolve his financial situation. He ultimately resolved his remaining delinquent accounts and his past financial problems do not cast doubt on his current reliability, trustworthiness, or good judgment.

AG ¶ 20(c) applies because Applicant's financial situation is stabilized and there are clear indications Applicant's financial situation is under control. AG ¶ 20(d) applies because Applicant demonstrated that he made a good-faith effort to resolve his delinquent accounts. He initially attempted to save his home by applying for a mortgage modification. When that was not successful, upon the advice of a law firm, he filed for Chapter 13 bankruptcy. After the Chapter 13 was dismissed, Applicant resolved the delinquent accounts on his own. It took him some time to earn sufficient income to resolve the delinquent accounts, but he was diligent locating the current holder of each debt and paid them in full.

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 considered Applicant's 11 years of service with his employer, and his two years of service as a contractor in Afghanistan. While Applicant's decision to go on a two week European vacation after his deployment in Afghanistan while still having delinquent debts appears questionable, it is understandable. Applicant had not seen his wife in over a year. He likely made good money as a contractor to a dangerous deployed location. The trip did not affect his ability to resolve his delinquent accounts. The security concerns raised under financial considerations are mitigated.

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.f:	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.

ERIN C. HOGAN
Administrative Judge