



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



In the matter of:)	
)	
)	ISCR Case No. 15-00396
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: James P. Fleisher, Esq.

05/31/2016

Decision

DAM, Shari, Administrative Judge:

Applicant began accumulating delinquent debts in 2004, as a consequence of marital issues. He has resolved eight of the ten alleged debts and will resolve the remaining two if found to be his responsibility. He mitigated the financial security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On December 21, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) for re-investigation. On October 3, 2015, 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 (AG) effective within the DoD for SORs issued after September 1, 2006.

On November 15, 2015, Applicant answered the SOR (Answer), and requested a hearing. On February 12, 2015, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On February 16, 2016, DOHA issued a hearing notice, setting the case for March 2, 2016. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and offered Applicant Exhibits (AE) A through O into evidence. All exhibits were admitted without objections. The record remained open until March 25, 2016, to give Applicant time to submit additional exhibits. Applicant timely requested that the deadline for submitting additional documents be extended. Department Counsel had no objection to said request. On March 23, 2016, I entered an order extending the closure of the record to April 25, 2016. Applicant timely submitted additional exhibits marked as AE P through S and they were admitted into the record without objection. DOHA received the hearing transcript (Tr.) on March 14, 2016.

Findings of Fact

Applicant admitted the allegations contained in the SOR ¶¶ 1.a through 1.e, and denied those in SOR ¶¶ 1.f through 1.j. His admissions are accepted as factual findings.

Applicant is 46 years old and divorced from his wife since 2007. They were married in 1988 and have six children, ages 25, 24, 22, 19, 14, and 13. The three younger children reside with Applicant and are supported by him. He has a bachelor's degree and credits toward a master's degree. He has worked for his current employer for the past 10 years and held a security clearance during those years. (Tr. 21-24.)

Applicant stated that his financial problems began in 2004 when his former wife began using drugs, and subsequently left their home in 2005. Applicant then became solely responsible for managing the house and finances, and caring for their six children. (Tr. 25.) He subsequently filed for divorce, which was finalized in November 2007. He received custody of the children, and his wife was ordered to pay \$50 per month per child. She owes him about \$5,000. (Tr. 30.)

Applicant served in the Army from 1992 to 1995. He transferred to the Air Force and in November 2005 he was honorably discharged. He decided not to further pursue a military career in order to have more consistent time to care for his children. He subsequently was unemployed until June 2006, when he obtained his current job. While in the service, he held a Top Secret clearance and was eligible for access to sensitive compartmented information (SCI). (Tr. 27-28.)

After the divorce in 2007, Applicant began learning the extent of his personal and marital delinquent debts. At that time he was unable to address many of them because he did not earn enough money to pay current expenses, support his children, and pay

the outstanding bills. In 2011 he borrowed money from his pension plan to help manage his financial obligations. (Tr. 29- 31.)

Based on credit bureau reports (CBR) from January 2013, June 2015, and March 2016, the SOR alleged 10 delinquent debts totaling \$30,394, which accumulated between 2005 and 2009. Included in those debts were six unpaid medical bills, a judgment, and three charged-off accounts. (GE 2, GE 3, and GE 4.) Recently, he contacted a credit counseling company to help him identify the two larger debts alleged in the SOR, which total \$26,759. (Tr. 51.) The status of the SOR debts is as follows:

1. (SOR 1.a) The homeowners' association judgment for \$1,289 was satisfied and released in February 2016. (Tr. 32-33; AE G.)
2. (SOR 1.b) The \$108 medical debt was paid in November 2015. (Tr. 33; AE I.)
3. (SOR 1.c) The \$33 medical debt is paid. (Tr. 33; AE M.)
4. (SOR 1.d) The \$54 medical debt was paid in November 2015. (Tr. 33; AE I.)
5. (SOR 1.e) Applicant stated that he paid the \$1,467 automobile loan in 2011. It is resolved. (Tr. 34, 58; AE M.)
6. (SOR 1.f) Applicant testified that he had difficulty locating the creditor for the delinquent \$13,178 loan, which was assumed in 2004. He said that the original creditor sold the debt. He recently spoke to the current creditor about the debt, but was unable to learn the balance or how to resolve it. In early 2016, Applicant's new credit counselor became involved in resolving the debt and requested a payment history of the debt from the new creditor, in order to resolve it. Applicant intends to resolve it. (Tr. 36, 56; AE N, AE O.)
7. (SOR 1.g) Applicant testified that he has been unable to locate the original creditor for this \$13,581 debt. He did a Google search for the SOR-listed creditor and found the name of a bank. He called that bank several times and it has no record of the debt or his account. He has not received any information from any company pertinent to this debt for at least five years or more. (Tr. 38-39.) Recently, his credit counselor contacted the creditor and to date has not found any additional information about the debt. Applicant testified that he would make arrangements to pay this debt if the creditor is located. (Tr. 47, 57; AE P.)
8. (SOR 1.h) The \$562 medical debt was paid in March 2016. (Tr.40; AE R.)
9. (SOR 1.i) The \$72 medical debt was paid in February 2016. (Tr.40; AE H.)
10. (SOR 1.j) Applicant cannot locate the creditor for this \$50 medical debt after reviewing all credit reports. It is resolved. (Tr.41.)

Applicant's net monthly income is \$5,646, and does not include any money from his former wife for child support. His expenses are about \$5,277 and include monthly payments of \$250 on two credit cards, which have a combined balance of \$3,100. He has about \$350 remaining at the end of the month. (AE C.)

In January 2013 Applicant discussed the SOR debts with a government investigator. He told the investigator that he would begin resolving the debts. However, he said that he did not start paying them until later because he was paying other debts, and could not locate some of creditors based on the limited information he had. He said that he has timely filed all state and Federal income tax returns. He recently sought assistance with a credit counseling firm. (Tr. 61-62.)

Applicant submitted his performance evaluations for 2012 to 2013, 2013 to 2014, and 2014 to 2015. All of them consistently rate him as "fully satisfactory" or "exceeds expectations" in the various categories. (AE J, AE K, and AE L.) He submitted a letter from his supervisor for the past four years. The supervisor wrote that Applicant has never received any "write up during the government's annual security inspection." (AE N.) He stated that he trusts Applicant and has "consistently found him to be a dependable and reliable person." (AE N.) Another supervisor, who has worked with Applicant, stated that Applicant has "produced some of the best work our company has been able to offer our government customers." (AE O.)

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 (AG) 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

¹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant's history of being unable to satisfy financial obligations accrued between 2004 and 2009, and continued until recently. The evidence is sufficient to raise both disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 20 provides conditions that could mitigate security concerns:

(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's delinquent debts arose under circumstances related to the last couple years of marriage to his former wife. Such problems are unlikely to recur given his divorce in 2007 and the subsequent steps he has taken to slowly resolve his financial problems. His reliability and trustworthiness in managing delinquent debts does not remain a concern. The evidence supports the application of AG ¶ 20(a).

Applicant provided evidence that the financial problems alleged in the SOR arose while married to his former wife and in the early years after his divorce, when he became solely responsible for his children's care. Those facts were the result of circumstances beyond his control. However, he did not provide sufficient proof of the steps he attempted to resolve the debts while they were accumulating. AG ¶ 20(b) has partial application.

Quite recently, Applicant sought the assistance of a credit counseling company to help resolve two old debts. At this time, he has addressed eight of the ten alleged debts, and intends to address the larger debts as soon as he has more information. There is

sufficient evidence to conclude that his finances are coming under control, as a consequence of his good-faith efforts to resolve debts. Thus, the evidence establishes mitigation under AG ¶ 20(c) and AG ¶ 20(d).

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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is an intelligent 46-year-old employee of a defense contractor, where he has worked since 2006. He honorably served in the military for 13 years, and held a clearance for all of those years. He has gained the support and trust of his supervisors based on his performance over the past ten years. His financial difficulties started in 2004 as a consequence of marital problems. In 2007 he and his wife divorced, and he was awarded custody of his six children. He has received minimal financial assistance from his former wife over the years. At this time, three of the children no longer reside with him, having reached their majority. The evidence demonstrates that he has resolved six medical debts, a judgment, and car loan. He recently located the creditor for an old loan for \$13,178, which he stated he would resolve. The listed creditor for the other large delinquent debt for \$13,581 has no account information for Applicant at this time. Applicant's budget provides some room for managing a repayment plan if necessary. Given his record of military service, good job performance evaluations, role as a single parent, and the amount of debt which is not definitively resolved at this time, there is nothing in the record that persuades me to conclude that Applicant is a security risk based on unpaid debts. While testifying, he was credible and forthright. Overall, the record evidence leaves me without doubts as to Applicant's present eligibility and suitability for a security

clearance. Applicant met his burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a to 1.j: 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.

SHARI DAM
Administrative Judge