



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



In the matter of:)	
)	
[NAME Redacted])	ISCR Case No. 15-00639
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

05/18/2016

Decision

HOGAN, Erin C., Administrative Judge:

On August 7, 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 17, 2015, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on January 6, 2016. Applicant had 30 days to submit a response to the FORM. On February 19, 2016, he submitted a timely response to the FORM. On February 24, 2016, the FORM was forwarded to the Hearing Office and assigned to me on March 1, 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 1)

Applicant is an employee of a DOD contractor seeking to maintain his security clearance. He has worked for his current employer since September 2003. He has held a security clearance since 2001. He has a high school diploma. He is married and has one adult stepson. (Item 2)

On July 17, 2014, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). In response to Section 26 – Delinquency Involving Routine Accounts, Applicant listed several delinquent accounts. He indicated that his household income was reduced when his overtime and travel pay were reduced and his wife was forced to retire. He indicated that he was halfway through a payment plan with a debt-settlement company to resolve his delinquent accounts. (Item 3, section 26)

A subsequent background investigation revealed the following delinquent accounts which are alleged in the SOR: a \$20,892 credit-card account that was charged off in June 2013 (SOR ¶ 1.a: Item 4 at 3; Item 5 at 2); a \$15,322 credit-card account that was charged off in June 2013 (SOR ¶ 1.b: Item 4 at 3); and \$11,375 credit-card account that was charged off in June 2014 (SOR ¶ 1.c: Item 4 at 4; Item 5 at 4)

In his response to the SOR, Applicant admits to all three debts. He states that his and his wife's unsecured debt rose between 2010 and 2012 because his wife's part-time work hours were cut. She retired with the understanding that she would continue to be able to work 1,000 hours a year. His wife's employer ended this agreement in 2011 as a result of a change in company policy. Applicant's income decreased because his company did not send him on travel work sites. He and his wife have been working on their financial issues since 2013. They have changed their spending habits and have no other unsecured debt other than the debts alleged in the SOR. (Item 1)

The debts alleged in the SOR have been included in a debt-settlement program that Applicant entered into on April 30, 2013. They have been making timely payments towards the program. The debt alleged in SOR ¶1.a is the next debt that the debt-settlement company will enter into a debt settlement with payments to start in June 2016. The debt alleged in SOR ¶1.b is being paid and will be paid in full in May 2016. The debt alleged in SOR ¶1.c was part of the debt-settlement agreement and paid off in January 2015. The debt-settlement program provided a letter indicating that Applicant is a client in good standing with the debt-settlement program. (Item 1)

In his answer to the FORM, Applicant indicated he resolved a debt (\$10,187) not alleged in the SOR in February 2014. (Item 6 at 1, 3, 10) He paid off the debt alleged in SOR ¶ 1.c in January 2015. (Item 6 at 1-2) The July 2015 credit report verifies the debt alleged in SOR ¶ 1.c is paid off. (Item 5 at 4) Applicant is making payments towards the debt alleged in SOR ¶ 1.b and it will be paid off in May 2016. (Item 6 at 1, 4) Through his debt-settlement program, he intends to enter into a settlement with the debt alleged

in SOR ¶ 1.a with payments to begin in June 2016. Applicant provided copies of his payment agreements for the debts alleged in SOR ¶¶ 1.b and 1.c, a copy of his agreement with the debt-settlement company, and proof that he was making payments towards his debt-settlement program. (Item 6)

When Applicant entered into the agreement with the debt-settlement company in April 2013, his total monthly income was \$6,128. His total monthly expenses were \$5,164. He had \$964 left over each month after expenses. He agreed to pay \$795 monthly towards the agreement. His payments will continue under the agreement until April 2017. He has been making timely payments since April 2013. (Item 6 at 18, 21)

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 2010. The SOR alleges three delinquent accounts with a total balance of approximately \$47,589. 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) applies. Applicant incurred financial problems because his of reduced hours and travel in his job and the loss of his wife's income. He took steps to resolve his delinquent accounts in April 2013 by entering into an agreement with a debt-settlement company. He has been making timely payments toward the plan since that time. Two of the three debts alleged in the SOR have been resolved. He is in the process of negotiating a settlement on the third debt. Applicant also paid off a fourth delinquent account that was not alleged in the SOR. Through his actions, Applicant has demonstrated his reliability, trustworthiness, and good judgment.

AG ¶ 20(b) applies because Applicant and his wife encountered financial problems as a result of a reduction in his work hours and the loss of his wife's income. Circumstances beyond Applicant's control adversely affected his finances. His efforts to resolve his debts by entering into a debt-settlement agreement in April 2013 and his timely payments toward the agreement indicated that Applicant acted responsibly under the circumstances.

AG ¶ 20(c) applies because Applicant assessed his financial situation when entering into the agreement with the debt-settlement company. Applicant systematically resolved his delinquent accounts. Only one delinquent account remains which based on Applicant's track record, he is likely to resolve.

AG ¶ 20(d) applies because Applicant demonstrated that he made a good-faith effort to resolve his delinquent accounts. In April 2013, he entered into a debt-settlement agreement. He has followed the terms of the agreement and makes timely payments. He has resolved three of the four delinquent accounts included in the agreement. (SOR ¶¶ 1.b and 1.c and one debt not alleged in the SOR) He established a plan to repay his delinquent accounts and has followed the terms of the plan.

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.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be

considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's 13 years of service with his employer. I considered that the loss of his wife's job and a reduction in income for Applicant adversely affected their finances. Applicant took steps to resolve his delinquent obligations by entering into a debt-settlement program. He has systematically resolved three of four delinquent debts and intends to enter into a settlement to resolve the remaining debt through his debt-settlement program. Considering his past history of timely payments and resolution of debts through the debt-settlement program over the past three years, I am confident Applicant will successfully resolve the remaining debt. 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.c:	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