



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-01217
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

04/21/2016

Decision

HOGAN, Erin C., Administrative Judge:

On September 15, 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 November 8, 2015, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on December 4, 2015. Applicant received the FORM on December 15, 2015. Applicant had 30 days to submit a response to the FORM. He did not submit a response to the FORM. On February 1, 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 May 2014. He is married and has four children. (Item 2)

On June 27, 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, including a past-due automobile loan, and a past-due mortgage. He mentioned that he has a payment arrangement on the automobile loan and that he was in the process of applying for a loan modification on his mortgage. From 2013 to 2014, Applicant endured two periods of unemployment, which caused these accounts to become delinquent. (Item 3, section 26)

A subsequent background investigation revealed the following delinquent accounts which are alleged in the SOR: a mortgage account past due in the amount of \$53,298, with an account balance of \$350,077 (SOR ¶ 1.a: Item 4 at 1; Item 5 at 4); and a \$55 cable television account placed for collection. (SOR ¶ 1.b: Item 4 at 2; Item 5 at 5).

In his response to the SOR, Applicant states that the sequestration imposed by Congress adversely affected a lot of contractors. In 2012, his salary was initially reduced. A few months later, his position was cut because of the lack of funds. He was unemployed from July 2013 to November 2013, and April 2014 to June 2014. His periods of unemployment adversely affected his ability to pay his mortgage. Applicant was the sole breadwinner. When Applicant found a job, his salary decreased by \$100,000. (Item 1)

Applicant is being considered for a position that will increase his income. His wife, a psychologist, is also actively seeking employment in order to help out with expenses. Applicant and his wife have been working with the bank when the first delinquency occurred on their mortgage. They did not purchase a home that they could not afford. They submitted a request for a loan modification in July 2014. It is under consideration. The \$55 cable television debt was just overlooked. Applicant provided proof that he paid this debt. (Item 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 2012. He had difficulty meeting his mortgage payments, resulting in a past-due balance of \$53,298. I consider the \$55 cable bill to be insignificant and do not give it much weight when assessing Applicant's financial responsibility.

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 because circumstances beyond Applicant's control adversely affected Applicant's ability to pay his mortgage payments. The sequestration initiated by Congress resulted in Applicant's pay being reduced in 2012 and the loss of his job in 2013. He endured two periods of unemployment, four months in 2013 and two months in 2014. It should be noted that aside from the delinquent mortgage account, Applicant appears to be current on all of his other debts. He paid the cable television debt alleged in SOR ¶ 2(b). He is in the process of having his mortgage loan modified. This process can take years. Circumstances beyond Applicant's control adversely affected his financial situation. He has taken reasonable steps to resolve the problem. Applicant's situation does not cast doubt on his reliability, trustworthiness, or good judgment.

AG ¶ 20(c) applies because Applicant's financial situation will be resolved once the mortgage loan modification is approved. AG ¶ 20(d) applies because Applicant demonstrated that he made a good-faith effort to resolve his delinquent accounts. He paid off the cable television account and is working with the bank to obtain a mortgage loan modification. He has several student loans that are in deferment. He has no additional delinquent accounts. AG ¶ 20(e) does not apply to the facts of this case.

Sequestration, a reduction in income, and several periods of unemployment adversely affected Applicant's financial situation. As a result, his mortgage payments became delinquent. Applicant is attempting to obtain a loan modification. The other delinquent account alleged in the SOR was not paid because of oversight as opposed to an inability to pay. It is paid in full. Applicant is taking sufficient measures to rectify the delinquent mortgage situation. He has no other delinquent accounts.

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 that Applicant is a married father of four. I considered his history of working for Department of Defense contractors. I considered the adverse impact sequestration had on Applicant as well as his two periods of unemployment and his reduction in pay. Considering the hardships Applicant has endured over the past few years, it is a testament to Applicant that he maintained payments towards his other debts. The key issue in this case is the delinquent mortgage. Applicant requested a loan modification which is currently pending. He and his wife are looking for better employment opportunities. Should the loan modification not be approved, it is likely Applicant will take steps to resolve his mortgage. He has mitigated the security concerns raised under 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.b:	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