



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



In the matter of:)
)
) ISCR Case No. 14-04754
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

05/15/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On January 6, 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; 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 DOD on September 1, 2006.

On January 27, 2015, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on March 30, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 3, 2015. I convened the hearing as scheduled on April 30, 2015. The Government offered

exhibits (GE) 1 through 4, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A-1 through K-10, which were admitted into evidence without objection. The record was held open until May 7, 2015, to allow Applicant to submit additional documents, which he did. They were marked as AE L and M, and were admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on May 11, 2015.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.b, 1.c, 1.d, 1.e, 1.g, 1.h, 1.i, and 1.k. He denied the remaining allegations with explanations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 53 years old. He married in 1983 and divorced in 1997. He has children ages 27 and 23 from the marriage. He remarried in 1997 and has a 17-year-old child who lives at home. He holds bachelor's and master's degrees. He has not served in the military. He has worked for his current employer since September 2013.²

Applicant was gainfully employed in the technology sector during the first half of his career. In early September 2001, Applicant's employer offered him a choice of relocating with the company to a different state, or accepting a severance package to leave the company. At the time, Applicant's children from his first marriage were young, and he did not want to move away from them. He was confident he could find new employment, and he accepted the severance package. Four days later, on September 11, 2001, terrorists attacked the United States. The technology industry suffered and began closing remote offices where Applicant lived. He had difficulty finding employment. His choice was again to relocate with more limited options. He decided he needed to change his skills so he would be more marketable. He was able to find some work, but he was severely underemployed from 2001 to 2005, earning significantly less income than he previously had. Changing his skill set allowed him to stay in the area so he would not be far from his children. His wife was employed as a nurse and was able to supplement some of the income loss.³

In 2004, Applicant's wife developed a medical condition that was treatable, but impacted her ability to work full time. At this time, Applicant relocated his family to State B so he could maintain employment. In 2006, he sold his home in State A and purchased a new home in State B. Unfortunately, around the same time, his wife's medical condition deteriorated, and she was unable to maintain steady employment.

¹ Hearing exhibit I is Department Counsel and Applicant's email memoranda regarding the additional exhibits.

² Tr. 23-27, 32.

³ Tr. 27-36.

The loss of her income severely impacted their finances. He was employed from May 2005 until he was laid off in August 2008. He was unemployed until December 2008.⁴

Due to Applicant's wife's medical condition, they decided to move back to State A. He accepted a job in December 2008 in State A. They leased their home in State B, but the rent was not sufficient to cover the mortgage payment. Although he was steadily employed, the new job was at a reduced income. His wife's medical condition required she receive treatment from providers outside of their insurance coverage, and they assumed significant out-of-pocket medical expenses. Applicant was paying his bills, but his debts began accumulating.⁵

In September 2010, Applicant voluntarily left his job to accept employment with another company where he earned more money. He was able to work from home, which also reduced his expenses. He was laid off in September 2012. Applicant's financial problems were becoming unmanageable. He took withdrawals from his Individual Retirement Account and his 401(k) retirement account to cover his monthly expenses. He paid the taxes and penalties on the withdrawals. In late 2012, he made the decision he needed financial help. He contacted a reputable credit consolidation company (CCC) and began paying his delinquent debts. Applicant worked as a part-time instructor for a college during his periods of unemployment, but was underemployed. He continued his job search and found employment in September 2013. He has since refinanced his home in State B and is able to cover the mortgage with the rental income.⁶

Applicant used credit cards during his periods of unemployment or underemployment to meet his family's living expenses and medical needs. He has been resolving his delinquent debts since September 2012 through the CCC. He makes an automatic payment through his bank account each month to the CCC. Once there are significant funds to offer a creditor a settlement, the CCC will reach out to the creditor and negotiate a payment or settlement. Applicant maintains regular contact with the CCC or is contacted by them when they have reached a settlement.⁷

The debt in SOR ¶ 1.a (\$29,849) is included in the CCC payment agreement. The creditor agreed to settle the debt in August 2014 for \$11,940. Applicant made monthly payments to satisfy the settlement payment. The remaining balance at the time of the hearing was \$1,785. The debt will be completely settled with a final payment in May 2015.⁸

⁴ Tr. 29-33, 36-37, 39, 84.

⁵ Tr. 27, 38-42, 84-85.

⁶ Tr. 40-44, 80-81, 99-100; AE G-6.

⁷ Tr. 42-43, 46-52, 55-56, 92-94; AE C-2, E-4, F-5, H-7, I-8.

⁸ Tr. 45-48; 55-57; AE A-1, C-2, D-3.

The debt in SOR ¶ 1.b (\$13,046) is a credit card debt. The CCC is in periodic negotiations with the creditor to settle the debt.⁹

The debt in SOR ¶ 1.c (\$10,006) and ¶ 1.g (\$10,000) are the same account. It is a credit card debt. The CCC is in active negotiations to settle the debt and has made an offer to the creditor.¹⁰

The debt in SOR ¶ 1.d (\$4,854) was reduced to a judgment that was settled and paid in November 2014. Applicant provided a copy of the release of judgment.¹¹

A settlement agreement of \$7,306 was reached for the credit card debt in SOR ¶ 1.e (\$14,773). Applicant is making monthly settlement payments through the CCC. The settlement will be completely paid in January 2016.¹²

The debt in SOR ¶ 1.f (\$22,019) was charged-off in April 2014. Applicant received an Internal Revenue Service (IRS) Form 1099-C, cancellation of debt. It was filed with his federal income tax returns. It is resolved.¹³

The debts in SOR ¶ 1.h (\$7,866) and ¶ 1.i (\$3, 238) are credit card debts. Both are included in the CCC plan and active negotiations are ongoing to reach a settlement.¹⁴

The debt in SOR ¶ 1.j (\$4,900) is a credit card debt. A settlement was reached in October 2014, and Applicant has been making monthly payments through the CCC plan. The remaining balance is \$2,238. It is expected to be completely settled and paid in September 2015.¹⁵

The debt in SOR ¶ 1.k (\$2,000) is for past-due rent owed to Applicant's landlord. Applicant fell behind when he was unemployed. He discussed the past-due debt with his landlord who agreed to use Applicant's security deposit to cover the amount owed. Applicant self-reported this debt on his security clearance application as it is not part of his credit report.¹⁶

⁹ Tr. 54, 58-62; AE C-2.

¹⁰ Tr. 54, 62-65, 72, 90-91; GE 3, 4; AE C-2.

¹¹ Tr. 53, 65-67; AE C-2; Answer to SOR.

¹² Tr. 53, 67-68; AE C-2, D-3.

¹³ Tr. 54, 68-72; AE C-2, D-3, L, M.

¹⁴ Tr. 54, 73; AE C-2.

¹⁵ Tr. 54, 73-74; AE D-3.

¹⁶ Tr. 55, 75-78; GE 1.

Applicant provided a copy of the CCC report showing ten accounts are part of the plan. He also provided a copy of his contract with the CCC that he signed in September 2012. Some accounts are settled and resolved and some are pending settlement as active negotiations are ongoing.¹⁷

Applicant's current annual income is \$80,000. His wife continues to incur significant out-of-pocket costs for medical expenses. Applicant estimated his annual out-of-pocket medical expenses to be between \$3,000 and \$5,000. Applicant works part-time as a college instructor to earn more so he can continue to resolve his delinquent debts. His wife is unable to work. He has a budget on a computer spreadsheet to track all of his expenses and payments. The only delinquent debts he has are those that are included in the CCC plan. As the balance of his monthly deposits increase in the CCC account, it then negotiates with the creditors, thereby systematically resolving his delinquent debts. Through the plan, five debts have been canceled, settled and paid, or being paid. Applicant understands he may receive an IRS Form 1099-C for some debts and his duty to file it with his tax returns. He has done his own financial counseling by following a reputable author's advice and reading financial websites. Presently, he has one credit card with a \$500 limit. Its present balance is approximately \$200. His wife does not have any credit cards.¹⁸

Applicant's facility security officer (FSO) provided a character letter. He has known Applicant since 2008 and is aware that Applicant has worked in several high-level support contracts for the government. He is unaware of any security violations. He considers Applicant an upstanding citizen and member of the community. Applicant has received accolades for his professionalism. The FSO trusts Applicant with sensitive, personal and security-related information and has never had any reason to doubt or question him.¹⁹

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 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

¹⁷ AE C-2, D-3, E-4, F-5.

¹⁸ Tr. 82-87, 92-99, 101-105.

¹⁹ AE K-10.

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 not drawn 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 to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 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 all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant had ten delinquent debts that he was unable to pay for several years. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 had several periods of unemployment and underemployment. His wife's medical condition prevented her from working, which impacted the family finances. They incurred significant out-of-pocket medical expenses. These conditions were beyond Applicant's control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Before receiving the SOR, Applicant sought financial assistance with the CCC. He has been making automatic payments to CCC who then negotiates settlement plans. Through a systematic payment plan he has settled some of the delinquent debts and is in active negotiations to resolve the remaining debts. Applicant has acted responsibly under the circumstances. AG ¶ 20(b) applies.

Applicant has educated himself regarding his finances through reading financial websites and books. He has initiated a good-faith effort to resolve his debts through his payment plan with the CCC. He has a budget. He has discussed his past-due rent with his landlord who will use his security deposit to cover the debt. He has a stable job and is living within his means. Applicant's financial problems are being resolved and under control. AG ¶ 20(c) and AG ¶ 20(d) apply.

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.

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 53 years old. He experienced financial problems when he was unemployed and underemployed. During this same period, his wife had medical problems and could no longer work. The loss of her income and the out-of-pocket medical expenses also significantly impacted the family's finances. Realizing his debts were becoming unmanageable, Applicant sought financial assistance through the CCC in 2012. He has been systematically and responsibly resolving his delinquent debts. Applicant has met his burden of persuasion. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

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.k:

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 a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge