



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



In the matter of:)
)
) ISCR Case: 14-04927
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

10/30/2015

Decision

DAM, Shari, Administrative Judge:

Applicant's three unpaid debts total \$10,800 or less. After almost ten years of self-employment, he experienced a serious downturn in his business, eventually resulting in its sale and depletion of assets. Due to circumstances beyond his control, including a current period of unemployment, he has insufficient financial resources to pay those outstanding debts at this time. Resulting security concerns were mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Statement of Case

On December 3, 2013, Applicant submitted a security clearance application (SF-86). On March 27, 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*

for Determining Eligibility for Access to Classified Information (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on April 20, 2015 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On July 15, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was provided to Applicant on July 20, 2015, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on July 31, 2015, and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA). He submitted a letter in response to the FORM within the 30-day period. I marked the letter as Applicant Exhibit (AE) A, and entered it into the record, as Department Counsel had no objection to it. DOHA assigned the case to me on September 1, 2015.

Findings of Fact

In his Answer Applicant admitted the allegations contained in SOR ¶¶ 1.a and 1.c, and denied the allegation contained in SOR ¶ 1.b. (Item 2.) In his response to the FORM, he acknowledged that after researching the judgment alleged in SOR ¶ 1.b, it was his debt. (AE A.) His admissions are incorporated into these findings of fact.

Applicant is 53 years old and married. He has two adult children and custody of two minor nieces. From 1995 to 2004 he owned a farm and supplied a company with stock. In 2004 the company changed its purchasing policies, which in turn seriously affected Applicant's income over the next two years. As a consequence, he began using credit cards and assets for living expenses. In 2007 he moved his family to improve his income. In 2010 he obtained a loan to expand his business and pay debts. His financial situation did not improve substantially and he sold his business in January 2014. (AE A.) Prior to the sale, he started a security guard position with a federal contractor in October 2013 and subsequently submitted a SF-86. He was unemployed from June 2013 until October 2013 when he obtained said position. (Item 3.)

Based on a credit bureau report (CBR) dated September 2014, the SOR alleged two unpaid judgments from 2007 and one delinquent debt from 2013. The debts totaled \$10,794 and are unresolved. The CBR listed other creditors or accounts, which are paid, including two different judgments he resolved in 2010, as he mentioned in his response to the FORM. (Items 4, 5; AE A.) The status of the debts is as follows:

Applicant disputes the amount of the \$1,353 cell phone debt alleged in SOR ¶ 1.a. He said he contacted the company to establish a payment plan, but it insisted on the full amount and would not accept a payment plan. (Item 2.) He noted that he has had an account with this company for 15 years. (AE A.)

Applicant thought that he had satisfied the \$5,783 judgment alleged in SOR ¶ 1.b, because he paid other judgments in 2010. Initially, he was unable to locate this judgment on his credit report, through his lawyer, or through contact with the creditor. After receiving the FORM he found the judgment because he had the correct case number. He is unable to pay that judgment because he lacks sufficient income at this time, but he intends to satisfy it when he is employed. (AE A.)

Applicant contacted the creditor of the \$3,658 judgment alleged in SOR ¶ 1.c in March 2015. The judgment balance as of that date is \$5,444. The creditor agreed to settle it for 40% of that balance, which is \$2,177. Applicant is unable to pay that amount because he does not have sufficient income. (Item 2; AE A.)

Applicant stated in his response to the FORM, “let me say, at no time did I ever pass off, forget or ignore the obligation of any of my debt, much less the judgments. I honestly believed that my judgments were settled in 2010 through the assistance of my lawyer.” (AE A.) He emphasized that he was not unwilling to settle the three debts, but apparently neither he nor his lawyer were aware of them. (AE A.)

Applicant emphasized that has been unable to pay his debts because he is not currently employed with the defense contractor, pending the outcome of this case. He collects \$272 a week in unemployment, which is insufficient for living expenses and debts. He stated that if he receives his security clearance, he will have enough money to make payment arrangements on the three debts. (AE A.) He did not provide a budget or financial information. There is no evidence that Applicant obtained credit counseling or sought financial assistance for resolving the debts.

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.

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

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

Applicant has two unresolved judgments from 2007, and a delinquent debt from 2013, all of which he has been unable to resolve because he does not have sufficient income. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

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

Applicant's three delinquent debts occurred under circumstances that are unlikely to recur, given the fact that he sold his business in 2014 and was employed with a defense contractor until recently. The September 2014 CBR documented his assertion that he resolved other debts in 2010, and demonstrated that similar circumstances are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. There is some evidence to raise the applicability of AG ¶ 20(a) as there are no recent delinquent accounts listed on his CBR. There is evidence to establish mitigation under AG ¶ 20(b), as the evidence indicates that he experienced

circumstances beyond his control due to a business downturn, and that he resolved some debts in 2010.

Applicant has not participated in financial or credit counseling, and there are no clear indications that the three delinquent debts are under control at this time because he does not have sufficient income; thus, AG ¶ 20(c) has no application. He provided documentation to demonstrate that he made a good-faith attempt to resolve the debt alleged in SOR ¶ 1.a. Hence, AG ¶ 20(d) has application as to that debt.

Applicant does not deny any of the three debts, although he disputes the amount of the debt listed in SOR ¶ 1.a. Because he did not submit evidence that he formally filed a dispute regarding that delinquent debt, or successfully resolved it through the dispute process, AG ¶ 20(e) has no application.

In sum, Applicant fell behind on his debts primarily because of insufficient income, resulting from economic conditions affecting his business that began in 2007, and culminated in January 2014 when he sold his business. At this time he has three debts, which total \$10,800 or less. He is unable to pay those debts and support his wife and two nieces on his unemployment income. He indicated that should his security clearance be reinstated, he intends to resolve them.

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 53 years old. He began employment with a defense contractor in September 2013, and is recently unemployed. Prior to obtaining that position he had been self-employed since 1995. In

2004 his business began experiencing substantial income problems, resulting in its sale in early 2014. He used credit cards and assets to support his wife and two nieces during those financially difficult years. Other than owing \$10,000 or less, his credit history documents financial responsibility. He indicated that he cannot pay or resolve the three debts now because he has insufficient income, as he is currently unemployed during this security clearance investigation. There is no significant evidence in the record to raise questions about his judgment, reliability, or statement that he will resolve those issues if he resumes employment. Overall, the record evidence leaves me without substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He 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 through 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.

SHARI DAM
Administrative Judge