



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



In the matter of:)
)
) ISCR Case No. 14-05866
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

03/09/2016

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On January 15, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on February 11, 2015, and requested a hearing. The case was assigned to me on October 1, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 6, 2015, setting the hearing for October 21, 2015. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection.

Applicant testified and offered exhibits (AE) A through E, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on October 29, 2015.

Findings of Fact

Applicant is 53 years old and has worked for a government contractor for about 33 years. He has an associate's degree. He is married for a second time and has three children. He has held a security clearance since becoming a contractor employee and has never had a security incident.¹

The SOR alleges Applicant has 10 delinquent debts totaling approximately \$14,718. The debts were listed on credit reports from April 2013, September 2014, and August 2015. Applicant did not admit or deny any of the allegations, but rather stated the current status of each account. His responses will be treated as denials.²

Applicant's financial difficulties resulted when he divorced his first wife in 2010. Although the divorce decree did not divide the couple's assets and liabilities, they reached a private agreement concerning the home and debts related to the home. Applicant was to remain as a co-mortgage holder with his ex-wife, but she was to remain in the house and be responsible for making the monthly mortgage payments. She was also responsible for making all the home-related expenses, such as utility and telecommunication expenses. Applicant's ex-wife is a nurse. In late 2011 or early 2012, Applicant's ex-wife became ill and lost her employment for a period of time. As a result of her illness, she got behind on paying her bills, including her mortgage payment. She provided written acknowledgment of her responsibility for the debts listed in SOR ¶¶ 1.a, 1.b, 1.c (SOR ¶¶ 1.c and 1.d are for the same underlying debt), and 1.f. After the divorce, Applicant changed bank account numbers, but some of his bills were associated with his old bank account for automatic payment purposes and were not switched to his new account until after they became delinquent. Once he became aware of this problem, he set up the automatic payments for the new account and brought his debts into a current status. The status of the debts is as follows:³

SOR ¶ 1.a (\$8,934):

This is a vehicle debt that arose because of Applicant's banking change. He has since made the account current as documented by the most recent credit report. This debt is being resolved.⁴

¹ Tr. at 5, 23-24; GE 1.

² Answer; GE 3-5.

³ Tr. at 26-27, 42, 48; Answer; GE 2; AE A-B.

⁴ Tr. at 29-31; GE 5.

SOR ¶ 1.b (\$1,162):

This is a telecommunication account opened by his ex-wife after the divorce. She accepted responsibility for this account. This debt is resolved.⁵

SOR ¶¶ 1.c and 1.d (same underlying debt) (\$667):

This debt became delinquent after the divorce and Applicant's ex-wife accepts responsibility for it. This debt is resolved.⁶

SOR ¶ 1.e (\$600):

This is a debt that arose because of Applicant's banking change. He has since paid the account as documented by the most recent credit report. This debt is resolved.⁷

SOR ¶ 1.f (\$437):

This debt became delinquent after the Applicant separated from his ex-wife. She accepts responsibility for it. This debt is resolved.⁸

SOR ¶ 1.g (\$363):

This is a debt that arose because of Applicant's banking change. He has since paid the account as documented by the most recent credit report. This debt is resolved.⁹

SOR ¶ 1.h (\$262):

This is Applicant's daughter's debt related to an apartment lease when she was in college. Applicant looked into the debt by contacting the landlord who had no record of the debt or of Applicant's responsibility for it. This debt does not appear on Applicant's most recent credit report. This issue is resolved.¹⁰

SOR ¶ 1.i (\$1,574):

This is the monthly mortgage payment for the home owed by Applicant and his ex-wife. She has assumed responsibility for making the payments. Applicant's ex-wife

⁵ Tr. at 31-32; GE 5; AE A-B.

⁶ Tr. at 32; GE 5; AE A-B.

⁷ Tr. at 34; GE 5.

⁸ Tr. at 35; GE 5; AE A-B.

⁹ Tr. at 36; GE 5.

¹⁰ Tr. at 37; GE 5.

told him that she was now current on her payments. Applicant stated that the current mortgage balance was about \$38,000 and, if necessary, he could pay it off if she did not make the payments. This debt is being resolved.¹¹

SOR ¶ 1.j (\$53):

This is a line-of-credit debt that arose because of Applicant's banking change. He has since paid the account as documented by the most recent credit report. This debt is resolved.¹²

Applicant testified that he currently has \$100,000 in a retirement account. He is current on all his other debts. He provided letters from his brother and a work supervisor, and both commented positively on Applicant's work ethic, responsible behavior, and integrity.¹³

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 that 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, administrative judges apply the guidelines 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,

¹¹ Tr. at 38-40; GE 5; AE A-B.

¹² Tr. at 41; GE 5.

¹³ Tr. at 43; AE C-E.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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* Executive Order 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 as follows:

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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant had multiple delinquent debts that he failed to pay over an extended period of time. The evidence is sufficient to raise both disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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

The delinquent debts attributed to Applicant are recent. He has paid all the delinquent debts for which his ex-wife is not responsible. Even though his ex-wife will continue to pay the monthly mortgage payment, he is in a position to pay off the mortgage balance should that prove necessary. Since he has made a concerted effort to repair his financial position, it is reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

There is no evidence Applicant received credit counseling. He made a good-faith effort to resolve the debts by either them. AG ¶ 20(c) partially applies and ¶ 20(d) fully applies.

Applicant's ex-wife assumed responsibility for four debts and the evidence supported that most were incurred after their divorce. He successfully refuted any obligation he had for his daughter's apartment debt. The most recent credit report and his ex-wife's written assumption of liability satisfy the documentation requirement. AG ¶ 20(e) applies to SOR ¶¶ 1.b – 1.d, 1.f, 1.i, and 1.j

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 relevant 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.

I considered Applicant's 33 years of federal contractor service. I found Applicant to be honest and candid about the circumstances that led to his debts. He took action to resolve his debts. I find it unlikely that Applicant will find himself in a similar future situation.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations security concerns.

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

Robert E. Coacher
Administrative Judge