



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



In the matter of:

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) ISCR Case No. 15-01998
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Applicant for Security Clearance

Appearances

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: *Pro se*

05/23/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On November 12, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a review based on the written record in lieu of a hearing. The case was assigned to me on April 11, 2016. Department Counsel submitted a File of Relevant material (FORM), dated January 14, 2016.¹ Applicant received the FORM on January 22, 2016. Applicant responded to the FORM and submitted a packet of documents. Based on a review of the case file, eligibility for access to classified information is granted.

¹The Government submitted six items for the record.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations under Guideline F (1.a through 1.g), and he provided explanations.

Applicant is 42 years old. He and his wife separated in July 2012, and are still in the process of divorcing. They have two sons from the marriage. He obtained his undergraduate degree in 1995. He continues to take graduate courses. Applicant completed his most recent security clearance application in 2012 and has been employed by a federal contractor since 2007. (GX 1) He has held a security clearance since 2008. (Item 3)

The SOR alleges seven delinquent debts, including six charged-off accounts and a past-due mortgage account. (GX 5) The approximate total for the delinquent debts is \$22,500. Applicant attributes his financial difficulties to marital separation and ongoing legal and support obligations. He was also unemployed from October 2005 until June 2006. (Item 2)

Applicant provided documentation that he has either paid or addressed all delinquent accounts. He supplemented the record by responding to the FORM with information supporting continued adherence to the actions that he took initially with regard to his financial issues. He continues with his payment plans. (Response to FORM)

Applicant's current mortgage loan (SOR 1.a) that was past due in the amount of \$9,428 is current. He brought his mortgage to current status in March 2015, and he has maintained it in current status. This occurred in March 2015. (Item 1)

Applicant has a charged-off bank account (SOR 1.b) in the amount of \$6,311. He provided documentation that payments began in 2015 and have been made and are current through February 2016. (Packet A) He is making payments of \$115 monthly.

As to SOR 1.c in the amount of \$2,461, he has provided documentation that he has been making small payments on the account through February 2016. (Packet A) He is also in the process of ongoing negotiations.

Applicant submitted documentation that he is making payments on the charged-off account (SOR 1.d) in the amount of \$1,696. He makes regular "good-faith" payments monthly.

As to SOR 1.e for an account in the amount of \$1,441, Applicant provided documentation that he has paid \$126 in 2015, and continues to make small monthly payments. (Packet A)

Applicant submitted documentation that he began making small consistent payments for the account in SOR 1.f in the amount of \$703. He is also in the process of

negotiations. He has also paid many non-SOR accounts as reflected in his security clearance application and credit reports. Applicant has not ignored his creditors. He is paying what he is able to pay. He has been making good-faith efforts. He pays legal fees. He has contacted credit-counseling services to get advice regarding delinquent finances. He has a budget. There are court-ordered financial obligations that are ongoing. He has brought the largest delinquent debt, which was the mortgage account, to current status.

As to the account in SOR 1.g, in the amount of \$545, Applicant submitted documentation that he has been making small monthly payments through February 2016. (Response to FORM)

Applicant submitted his credit report, dated February 20, 2016, that reflects he has no accounts that are 30, 60, or, 90 days past due. (Packet A) Although he is making small, regular good-faith payments, he is also trying to negotiate settlements. When the divorce is final, he will make larger payments to his creditors.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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. It also states that an individual who is

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted that the debts in the SOR are established. They are due to marital separation and legal obligations. His credit reports confirm the delinquent debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant provided documentation to show that he has addressed his delinquent debts. He paid his mortgage arrearage, and it is now current. He is making regular payments on most of his other SOR debts. He has paid many non-SOR debts. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) receives partial application.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially applies. Applicant's separation, legal costs, unemployment, and divorce issues were beyond his control. He has a current mortgage and is making regular small payments on his SOR debts. He has acted responsibly.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has application. He provided documentation that he is resolving his debts and has a track record of debt payments. There is information that he has received some financial counseling and he has made progress bringing his debts to current status. FC MC 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), applies.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 43 years old. He has held a security clearance since 2008. His marital separation and pending divorce and custody issues adversely affected his financial status. He was also unemployed for a period of time. There is nothing in the record concerning any criminal behavior. He has worked hard for many years. He has provided documentation that he has been making and continues to make small regular payments to his creditors. He paid non-SOR debts. He received financial counseling. He has not ignored creditors. He is making good-faith efforts to resolve his debts. The largest debt, his past-due mortgage is current. He has a track record of paying bills. He has mitigated the security concerns under the financial considerations guideline by providing sufficient information of his efforts to pay his debts.

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:
Subparagraphs 1.a-g:

FOR APPLICANT
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. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge

