



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-05066
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Ryan Nerney, Esq.

11/21/2016

Decision

HOGAN, Erin C., Administrative Judge:

On December 19, 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 March 7, 2016, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 25, 2016. The case was assigned to me on June 8, 2016. On August 2, 2016, a Notice of Hearing was issued, scheduling the hearing for August 24, 2016. The hearing was held as scheduled. During the hearing, the Government offered seven exhibits which were admitted as Government Exhibits (Gov) 1 – 7. Applicant testified, called one witness and offered 21 exhibits which were admitted as Applicant Exhibits (AE) A – W. The transcript (Tr.) was received on September 1, 2016. The record was held open until September 7, 2016, to allow Applicant to submit additional documents. Applicant timely submitted AA X – AA, which were admitted without objection. 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 denies all SOR allegations.

Applicant is a 42-year-old employee of a Department of Defense contractor seeking to maintain a security clearance. He has worked for his current employer since November 2008. He has held a security clearance since 1992 when he joined the United States Army. He served four years on active duty and after that several years in the Army National Guard. He was discharged from the Guard in 2007 with an honorable discharge. He has a college degree. He is married and supports two children, a seven-year-old son from a previous marriage, and a four-month-old daughter with his current wife. (Tr. at 18, 31-32; Gov 1; AE H; AE I)

Applicant's background investigation revealed that he has a history of financial problems. In 2012, Applicant's wages were garnished at his place of employment for a \$49,319 debt for delinquent student loans. (SOR ¶ 1.a: Gov 4 at 2) Additional delinquent accounts include: a \$7,233 account that was placed for collection in 2011 (SOR ¶ 1.b: Gov 3 at 2; Gov 4 at 2; Gov 5 at 6-7, 13); a \$7,064 account placed for collection in 2011 (SOR ¶ 1.c: Gov 5 at 6); a \$196 mattress store account that was charged off in 2012 (SOR ¶ 1.d: Gov 3 at 3; Gov 4 at 3; Gov 5 at 6); a \$104 cable television account that was placed for collection in 2014 (SOR ¶ 1.e: Gov 4 at 3); a \$6,008 account that was charged off in 2011 (SOR ¶ 1.f: Gov 4 at 3; Gov 5 at 13); and a \$7,998 credit card account that was placed for collection in 2012. (SOR ¶ 1.g: Gov 5 at 7)

Applicant's son was born in 2009. Both he and his girlfriend worked full-time. About a month before their son was born, his girlfriend stopped working. She suffered from severe post-partum depression and was unable to return to work. The loss of his girlfriend's income adversely affected Applicant's financial situation. He had to prioritize bills. When his son turned one, they learned that his son had autism. This resulted in increased medical bills for his son and his girlfriend remained depressed. He married her in 2012 so that she could have health insurance. The relationship did not improve after the marriage and they separated in October 2013. They entered into a custody battle and eventually divorced in April 2015. Applicant states that he incurred a lot of attorney's fees during the custody proceedings. He and his first wife share joint custody. His son is with him about 80% of the time because his ex-wife still suffers from depression. He pays \$150 a week in child support. (Tr. 24-30, 60-61; AE Q)

Applicant defaulted on his student loans during this period. His wages were garnished in late 2012. Applicant entered into a student loan rehabilitation program in March 2015. He paid \$972 a month for nine months. After the nine-month period was complete, Applicant was able to renegotiate a payment plan for a 20-year loan. His

payments began in March 2016. He pays \$145 monthly. Applicant is now current on his student loans. (SOR ¶ 1.a: Tr. 30-35; AE L; AE T; AE V; AE W)

The current status of the remaining SOR accounts are:

SOR ¶ 1.b: \$7,233 delinquent credit card account placed for collection: The collection agency took Applicant to court regarding this debt. In September 2013, the collection agency filed a Motion for Summary Judgement. On September 9, 2013, the Judge denied the motion. (Tr. 35-36; AE A) The account remains listed on a credit report, dated July 2016, but indicates that Applicant disputes the debt. (AE P at 17)

SOR ¶ 1.c: \$7,064 account placed for collection: When Applicant graduated from college, he bought a motorcycle using a credit card provided by the company that sold him the motorcycle. He purchased the motorcycle before he encountered financial problems. He was unable to make payments once his financial issues started. He still has the motorcycle. Applicant retained a lawyer and negotiated a payment plan with the creditor. He settled the debt for \$2,500 in February 2016. (Tr. 37-40; AE B; AE C; AE M; AE X) During settlement proceedings, the law firm negotiating the settlement revealed that three different collection agencies were collecting on the motorcycle debt. Based on my review of the evidence in the case file, including credit reports, I find that the debt alleged in SOR ¶ 1.c is the same as the debts alleged in SOR ¶¶ 1.f and 1.g.

SOR ¶ 1.d: \$196 charged-off mattress account: Applicant disputes this debt. He purchased a mattress under the terms of no interest if it was paid off within 12 months. Applicant claims he paid the mattress off in 12 months. In February 2016, Applicant disputed the account with the creditor. The account is not listed on a July 2016 credit report. (Tr. 41-42; AE P)

SOR ¶ 1.e: \$104 cable television account placed for collection: Applicant paid this debt in full in February 2016. (Tr. 43-44; AE E)

SOR ¶ 1.f: Duplicate of SOR ¶ 1.c. Debt is settled.

SOR ¶ 1.g: Duplicate of SOR ¶ 1.c. Debt is settled.

Applicant met his current wife in 2014. They married in May 2015 and had a daughter in July 2016. Applicant's current wife works full-time. Their combined annual income is over \$100,000. Their financial situation has improved. Applicant owns a house which they live in. His wife owned a condominium before they married. They rent out the condominium. They are current on both mortgage payments. They are able to satisfy their financial obligations. After expenses, they have approximately \$660 left over each month. His wife handles the budget and is very organized. Applicant credits his current wife with helping him get his financial affairs in order. (Tr. 44-47, 59-64; AE K; AE R; AE S)

Several of Applicant's co-workers wrote letters on his behalf. One co-worker has worked with Applicant on a daily basis for the past eight years. Applicant is described as "a person of integrity and character" who is dedicated to "performing a quality job to the best of his ability." She is aware of the allegations against Applicant and believes he is now in "a stable position – professionally, financially, and socially." She recommends Applicant maintain his security clearance. Another co-worker describes Applicant as "a reliable and dedicated professional." The Senior Engineer of a project Applicant has worked on for several years is aware of the security clearance allegations and states Applicant has never exhibited any actions that would raise concern regarding his obligation to protect classified information. He states Applicant acknowledged his past financial mistakes and was truthful in his plans to resolve them in a responsible manner. (AE G; AE AA)

Applicant's supervisor interacts with Applicant on a daily basis. He describes Applicant as a reliable member of the organization and a technical expert. Applicant "displays a high degree of responsibility in his professional interactions and his regard for the administrative and physical security policies of the command." His supervisor considers Applicant to be a valuable member of the team and he trusts his professional conduct. (AE G)

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. Applicant has had a history of financial problems, most of which occurred after he graduated from college and started a family. Applicant defaulted on his student loans, a balance of over \$49,000; and had five additional delinquent debts, an approximate balance of \$14,597.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his 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 own 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 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) applies. Most of Applicant's debts occurred after his first wife quit her job one month prior to giving birth to their son. The reduction in income prevented Applicant from paying all of his bills. Applicant has rehabilitated his student loans and has resolved most of the delinquent accounts. His past financial issues do not cast doubt on his current reliability, trustworthiness or 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) applies. Several conditions beyond Applicant's control contributed to his financial problems. His first wife's depression prevented her from working. This made it difficult to pay the bills. Their son was diagnosed as autistic. His treatment resulted in increased medical costs. When he was encountering financial problems, Applicant focused on daily needs. He and his first wife divorced and engaged in an expensive custody battle. Once his situation became more stable, he began to resolve his delinquent debts. He acted responsibly under the circumstances. I note that one of Applicant's largest debts involved the purchase of a motorcycle with a credit card. This action showed poor judgment. However, he purchased the motorcycle after graduating from college before he and his first wife encountered significant financial problems.

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 because Applicant has been resolving his debts. He rehabilitated his student loans and is now on a regular payment plan. He resolved the debts alleged in 1.c and 1.e. The debts alleged in 1.f and 1.g are duplicates of the debt alleged in 1.c. Applicant's budget indicates that his financial situation is under control.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant rehabilitated his student loans and is now making regular monthly payments towards the loans. He settled the credit card debt related to the purchase of a motorcycle (SOR ¶¶ 1.c, 1.f, 1.g). He paid the cable television debt. He is disputing the debts alleged in SOR ¶¶ 1.b and 1.c. Applicant demonstrated a good-faith effort to resolve his debts.

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) applies with respect to the debts alleged in SOR ¶¶ 1.b and 1.d. Regarding SOR ¶ 1.b, a judge denied the creditor's motion for summary judgment. Applicant denies this debt and it is noted as being disputed on his most recent credit report. Should it be determined that the debt is his, Applicant is now able to afford to settle the debt. Applicant formally disputed the debt alleged in SOR ¶ 1.d. The amount is minimal and is no longer on his most recent credit report.

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 the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's eight-year history of favorable duty performance with his current employer. I considered the positive comments of his supervisor and co-workers. I considered that Applicant was unable to pay all of his bills, including student loans, when his first wife stopped working and was unable to work after the birth of their son because of depression. I considered that Applicant's son was diagnosed with autism. I considered Applicant spent a lot of money for a divorce attorney and underwent a contentious custody battle. Applicant has remarried. Both he and his spouse work full-time. Their daughter was born this past

July. Applicant credits his current wife with helping him resolve his financial issues. His financial situation is now stable. Security concerns under financial considerations are mitigated.

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.g: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge