



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



In the matter of:)
)
) ISCR Case No. 18-01880
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

05/20/2019

Decision

Gregg A. Cervi, Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 5, 2016, requesting renewal of a Department of Defense (DOD) security clearance. On August 17, 2018, the DOD Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on September 19, 2018, and requested a hearing before an administrative judge.¹

The case was assigned to me on November 14, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 13, 2018,

¹ The DOD CAF acted under Executive Order (Exec. Or.) 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 revised adjudicative guidelines (AG) effective on June 8, 2017.

scheduling the hearing for January 4, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified. In post-hearing submissions, Applicant submitted several documents marked together as Applicant Exhibit (AE) A, that were admitted without objection.

Findings of Fact

Applicant is a 45-year-old aircraft test engineer, employed by a government contractor since 2008. He previously operated a fencing business from early 2017, but it failed in September 2017. He graduated from high school in 1992, and has completed some college. He married in 2000 and has three children ages 17 to 21. He was previously married for a short time in 1995. He served honorably in the U.S. Marine Corps on active duty from 1997 to 2002, and in the Marine Corps Reserve from 2002 to 2005. He deployed to Iraq in 2003 and 2004 during Operation Iraqi Freedom and Operation Enduring Freedom. While in the Marine Corps, he held a security clearance without incident. He currently holds a security clearance, granted in 2012, after being previously denied in 2010 by a DOHA Administrative Judge in an administrative determination.

The SOR alleges 10 delinquent debts, including three vehicle debts and several smaller consumer and medical debts. Applicant admitted all of the debts, and provided explanations with his answers.

Applicant first fell into debt when he left the Marine Corps and had difficulty finding civilian employment. In 2010, his security clearance was denied. He testified that he regained his clearance in 2012. However, from 2012 to 2013, Applicant's spouse suffered from a medical condition that required her to undergo two neck surgeries. She lost her job as a manager in 2012, and has not been able to return to work. In 2017, Applicant started a fencing business and worked nights for his government contractor employer. The fencing business failed by September 2017. Applicant accumulated debts that he was unable to satisfy, including a loan on a vehicle that was repossessed, and loans on vehicles for his spouse and daughter.

The status of the SOR debts is as follows:

SOR ¶ 1.a is a delinquent vehicle loan account for \$31,296 from October 2017. Applicant owes \$14,854 after the vehicle was repossessed and sold, and the debt has been charged off with no indication that the debt is being actively collected. Applicant notes that this was a vehicle used in his failed business. The debt has not been resolved.

SOR ¶ 1.b is a delinquent vehicle loan account for \$12,828 from September 2017. The vehicle was repossessed due to Applicant's failed business, and was sold. The resulting debt of \$6,067 was settled by Applicant for \$1,516 and paid. The debt is resolved.

SOR ¶ 1.c is a delinquent vehicle loan account for \$9,478 from September 2015. The vehicle was repossessed due to Applicant's spouse's medical condition and inability

to work. The debt was charged off in 2017, and there is no indication that the debt is being actively collected. The debt has not been resolved.

SOR ¶ 1.d is a delinquent telephone account for \$2,076. Applicant disputed the debt but eventually agreed to a settlement of \$1,250 and paid it. The debt is resolved.

SOR ¶ 1.e is a short-term loan for \$1,593. Applicant has been paying on the debt, which was reduced to \$956. The current status of the debt is unclear. The debt has not been fully resolved.

SOR ¶ 1.f is a collection by a bank for \$885. Applicant closed the account, but believes the bank continued to charge fees. Applicant testified that the debt was resolved through the use of a debt-relief company. The debt appears to be resolved.

SOR ¶ 1.g is a cable company debt for \$882. Applicant disputed the account and there have been no further collection efforts.

SOR ¶¶ 1.h – 1.j are 2017 medical collection accounts that were resolved in late 2017 and removed from his current credit report. The accounts have been resolved.

Applicant has been utilizing a debt-relief company since June 2018, but they show little results for the \$638 per month he was paying. After the hearing, Applicant discharged the company and began to settle accounts on his own. In addition to those already paid, he also settled and paid a bank card account that was not listed on the SOR.

Applicant completed a budgeting class offered by the county in February 2019. He provided a letter of recommendation from his employment team lead, attesting to his dependability and dedication to accomplishing the mission. He is described as an “impressive problem solver” and an essential contributor to the team’s success. Applicant noted that he received four special recognition awards and two spot awards. He noted the efforts he has made since his hearing, to settle debts. He is able to meet all of his monthly expenses, and will start saving about \$3,100 per month after his debts are fully resolved. He has access to a loan from his 401k retirement account if necessary to resolve debts.

Law and 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 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 national security eligibility will be resolved in favor of the national security.”

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 the applicant or proven by Department Counsel.” The applicant 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 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* 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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant incurred delinquent debts following the loss of his spouse's full-time income as a manager due to a medical condition, and his failed fencing business in 2017. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant suffered from economic conditions that were outside of his control. His spouse's loss of income and his failed business resulted in significant financial obligations that he was unable to meet, despite his continued work at night for his government contractor employer. Six of the ten SOR debts have been satisfied, and one other debt not on the SOR was paid. Applicant had three vehicles repossessed. Two vehicle loan accounts were charged off and do not appear to be in collection status, and the third debt was settled and paid. He also paid three medical debts, a bank fee debt, and a credit card debt.

Applicant has taken responsible action to gain control over his finances. He retained the services of a debt-relief company, but the company did not show sufficient progress for the money he was paying. He also completed a budgeting course, and has sufficient income to meet his current financial obligations. I believe Applicant's financial management has significantly improved and his finances are now under control. Although he continues to carry some delinquent debt, he has begun the process of resolving his remaining debts when able. I believe that Applicant will continue his efforts to expeditiously resolve the remaining delinquent accounts, and will refrain from further delinquencies. Given his continued efforts to quickly resolve the remaining debts, I find

that Applicant's past financial issues no longer cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b) - (d) are applicable.

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. I considered Applicant's testimony, documents provided after the hearing, his financial challenges, and his military service. Applicant has shown current financial responsibility and appears to have control of his finances. He is able to meet family financial obligations while continuing to resolve the remaining debts. He has shown the qualities of financial responsibility that is expected of clearance holders, and I am convinced that he has shown good-faith efforts to resolve his debts.

This clearance decision presumes Applicant will continue to progress toward expeditiously resolving his remaining outstanding collections, and to refrain from any additional delinquencies.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a conditional security clearance. I conclude Applicant has substantially mitigated the financial considerations security concerns and will continue to do so.

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.

Gregg A. Cervi
Administrative Judge