



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



In the matter of:)
)
) ISCR Case No. 18-02817
)
Applicant for Security Clearance)

Appearances

For Government: Michelle P. Tilford, Esq., Department Counsel
For Applicant: *Pro se*

07/12/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On December 13, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on December 31, 2018, and requested a hearing before an administrative judge. The case was assigned to me on February 28, 2019.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 12, 2019, scheduling the hearing for May 10, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. The objection to GE 5 was sustained. Department Counsel amended the SOR to delete SOR ¶ 1.i. Applicant testified and submitted Applicant’s Exhibits (AE) A through G, which were admitted without objection. The record was held open for

Applicant to submit additional information. He submitted documents that I have marked AE H through N and admitted without objection.

Findings of Fact

Applicant is a 43-year-old employee of a defense contractor. He has worked for his current employer or a predecessor company since April 2017. He has an associate's degree, which he earned in 2011. He has never married, but he has a teenage child. (Transcript (Tr.) at 34-36, 42; GE 1)

Applicant had periods of unemployment before he started his current job. He also admitted that he was financially irresponsible, and he "gave up on [his] credit." He did not file his 2014 federal and state income tax returns when they were due. With penalties and interest, he owed the IRS about \$2,450 and his state about \$97 for that tax year. (Tr. at 19-27, 38-42; GE 1)

The SOR alleges the federal taxes owed for 2014; a vehicle loan that was \$675 past due with a balance of \$15,033; a \$2,232 charged-off student loan; eight delinquent medical debts totaling \$2,279; and four miscellaneous delinquent debts totaling \$1,730. Except as addressed below, the allegations are established through credit reports and Applicant's admissions.

Applicant filed his 2014 federal and state income tax returns on May 8, 2019. He paid the IRS \$2,450 on June 19, 2019, to resolve his taxes owed for 2014. (Tr. at 19, 25; AE E, L-N)

Applicant is now current on what was a past-due vehicle loan. The balance of the loan has been reduced from \$15,033 to \$11,525. He paid the \$100 debt alleged in SOR ¶ 1.e in December 2018. He paid the \$452 debt alleged in SOR ¶ 1.c in May 2019. He paid the \$77, \$71, and \$60 medical debts alleged in SOR ¶¶ 1.g, 1.h, and 1.j in May 2019. (Tr. at 28-31; GE 2-4; AE B-D, G-J)

Applicant stated that he paid the \$69 cable television debt alleged in SOR ¶ 1.f. The debt is reported by a collection company through Experian on the July 2017 combined credit report with a date of last action of June 2017. The debt is listed on a November 2018 Equifax credit report with a date of last action of August 2014. The debt is not listed on the March 2019 Equifax credit report nor the May 2019 Experian credit report. Applicant's statement that the debt is paid is accepted. (Tr. at 31-32; GE 2-4; AE B-D)

Applicant has an agreement to pay \$200 per month to the company that is collecting the \$869 and \$768 medical debts alleged in SOR ¶¶ 1.k and 1.n. He has an agreement to pay \$100 per month to the creditor for the \$1,109 debt alleged in SOR ¶ 1.d. (Tr. at 27, 33)

There are four additional debts alleged in the SOR. Applicant stated that he has attempted to contact the creditor for the \$2,232 charged-off student loan alleged in SOR

¶ 1.b, but the creditor has not been cooperative. That debt and the three remaining medical debts totaling \$434 are no longer listed on Applicant's credit report. (Tr. at 28-29; GE 2-4; AE B-D, L)

Applicant stated that his finances are better since he has a stable job. He just received a raise, which he will use to address his debts. He has a greater appreciation of the importance of financial responsibility. He would like to buy a house within the next two years, and he knows that maintaining his finances in order is necessary to do so. He has not received formal financial counseling, but he has received advice from his brother and his brother's wife. He is also scheduled to take a training course from a realtor on what is required to buy a house. He credibly stated that he intends to pay his debts. (Tr. at 19, 27, 29, 43, 49-50; AE L)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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;
- (b) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of financial problems, including delinquent debts and unpaid taxes. 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:

- (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, 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant had periods of unemployment, but his financial problems were primarily self-inflicted. His failure to file his tax returns and pay his taxes when required was irresponsible and raises some questions about his judgment and willingness to abide by rules and regulations. AG ¶ 20(b) is not applicable. However, he has worked at his current job since April 2017, and he has been addressing his financial issues. He filed his 2014 tax returns and paid the taxes owed. He brought his car loan current. He paid or is paying all but four of the debts alleged in the SOR. He has a greater appreciation of the importance of financial responsibility. He would like to buy a house within the next two years, and he knows that maintaining his finances in order is necessary to do so. He credibly stated that he intends to pay his debts.

Applicant does not present a perfect case in mitigation, but a security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I believe Applicant is honest and sincere in his intentions to address all his debts. There are clear indications that the problem is being resolved and is under control. I find that he has a plan to resolve his financial problems, and he took significant action to implement that plan. Financial considerations security concerns are mitigated.

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(d):

- (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.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. 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.h and 1.j-1.p:	For Applicant
Subparagraph 1.i:	Withdrawn

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge