



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 18-02882
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esquire, Department Counsel
For Applicant: *Pro se*

07/24/2019

Decision

HOGAN, Erin C., Administrative Judge:

On December 28, 2018, 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 (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) effective within the DOD on June 8, 2017.

On March 25, 2019, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on April 9, 2019. Applicant received the FORM on June 10, 2019. Applicant had 30 days to submit a response to the FORM. He timely submitted a response on June 24, 2019. The Government did not object to the information Applicant provided in his response to the FORM. On July 15, 2019, the FORM was forwarded to the Hearing Office and assigned to me on July 31, 2019. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 35-year-old employee of a DOD contractor since March 2016. He served on active duty in the United States Air Force from July 2003 to June 2014. He received an honorable discharge. He was previously granted a security clearance in April 2005. He has a high school diploma with some college credit. He is single and has no children. (Item 3)

On November 24, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing. (Item 2) A subsequent background investigation revealed Applicant had three delinquent debts. The debts include a past-due mortgage in the amount of \$59,035 (SOR ¶ 1.a: Item 4 at 2; Item 5 at 1; Item 6 at 1); a charged-off credit card account in the amount of \$9,959 (SOR ¶ 1.b: Item 5 at 2; Item 6 at 2); and a delinquent utility account in the amount of \$344 that was placed for collection (SOR ¶ 1.c: Item 4 at 4; Item 5 at 2).

Between June 2014 and August 2016, Applicant encountered several periods of unemployment or underemployment. After he separated from the U.S. Air Force, he was unemployed from June 2014 to October 2014. He found employment in October 2014, but was laid off in October 2015. He was unemployed until March 2016 when he was hired by his current employer, however, he worked on a part-time status from March 2016 to August 2016. Applicant relied on his savings to supplement his periods of unemployment or under-employment. He got behind on his mortgage payments and relied on his credit card to pay expenses during this period. (Item 3)

Applicant applied for and ultimately received a mortgage loan modification, which was approved on May 31, 2019. He successfully completed a Trial Period Plan from January 2019 to March 2019. He timely paid monthly payments of \$1,717.01 during the trial period. (SOR ¶ 1.a: Item 1: Answer to SOR; Response to FORM). He entered into a repayment agreement with the collection agency for the credit card debt alleged in SOR ¶ 1.b. He gave the collection agency signed checks for the amount of \$373 each month starting in April 2019 to February 2020 in order to resolve the debt for \$4,108. Applicant is making payments towards this debt. (Item 1)

The \$344 utility account was for the residence Applicant lived in at a previous duty station. He was not aware of this debt. He indicated that he paid the debt off in his Answer to the SOR. He provided a confirmation number. The debt is no longer listed on his most recent credit report. SOR ¶ 1.c is found for Applicant. (SOR ¶ 1.c: Item 1; Item 6).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and

mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), 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 for national security eligibility will be resolved in favor of the 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 that 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 EO 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 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

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

All of the above disqualifying conditions apply because Applicant incurred several delinquent accounts after separating from the Air Force including a delinquent mortgage on the brink of foreclosure, a delinquent credit card account, and a delinquent utility account.

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 concern under Financial Considerations is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities.

The Government's substantial evidence and Applicant's admissions raised 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))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

(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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems were a result of his inability to find stable employment for several years after he separated from active duty. He endured several periods of unemployment or underemployment. Now that he is employed full-time, he has been able to begin resolving his delinquent debts. He was able to have his mortgage loan modified and he is making payments towards his delinquent credit account. There is sufficient proof that he paid the \$344 delinquent utility account. Applicant is making a good-faith effort to resolve his delinquent accounts. The mitigating conditions in AG ¶¶ 20(a), 20(b) and 20(c) apply. The security concerns raised about Applicant's financial situation 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 the 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 Applicant's employment history. I considered his 14 years of honorable service in the U.S. Air Force. Periods of unemployment and under-employment had an adverse impact on his finances. Applicant has been employed full-time since August 2016. He has worked to resolve his financial situation. The security concerns raised 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.c:	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge