



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



In the matter of:)
)
) ISCR Case No. 12-04345
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

09/04/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On April 22, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. 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 DOD on September 1, 2006.

Applicant answered the SOR on June 18, 2014, and requested a hearing before an administrative judge. The case was assigned to me on July 15, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 24, 2014. I

convened the hearing as scheduled on August 19, 2014. The Government offered exhibits (GE) 1 through 5, and they were admitted into evidence without objection. Applicant testified on his own behalf. He offered Applicant's Exhibit (AE) A through D, which were admitted into evidence without objection. The record was held open until August 26, 2014, to allow Applicant to submit additional documents. He submitted AE E and F, which were admitted into the evidence without objection.¹ DOHA received the hearing transcript (Tr.) on August 27, 2014.

Procedural Issues

Department Counsel moved to withdraw SOR ¶¶ 1.i and 2.a. The motion was granted.²

Findings of Fact

Applicant admitted the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 33 years old. He is a high school graduate and served in the Air Force from 2000 to 2010, when he was honorably discharged. He married in 2005 and divorced five months later. There were no children from the marriage. He remarried in April 2014, and there are two stepchildren that live with him.³

Applicant had difficulty transitioning from the military to civilian life and was unemployed from April 2010 to June 2010. He has worked for his present employer since June 2010. He has held a secret security clearance since 2002.⁴

In 2007, Applicant purchased a home using an adjustable rate mortgage. He attempted to refinance the home in 2008 to a fixed-rate mortgage. He was on official travel for approximately one month after he provided the mortgage company with the appropriate documents to refinance his mortgage loan. Based on the representations from the mortgage company, he believed the refinancing had been completed. When he returned from travel, he had a letter from the mortgage company advising him that his mortgage had not been refinanced. He had been previously advised that the refinancing agreement would permit him to skip the first month's mortgage payment. When the refinancing did not go through, he found himself behind in his payments by a month and he was now in arrears on his mortgage. He contacted the company to find out what action he could take and was advised the mortgage was already in foreclosure proceedings. He was told by the mortgage company that it had 90 days to provide

¹ Hearing Exhibit I is Department Counsel's memorandum forwarding Applicant's exhibits, and his indication that he did not object to the exhibits.

² Tr. 79.

³ Tr. 40, 64-66, 72.

⁴ Tr. 66-67.

Applicant with a rehabilitation payment plan. During this time, it refused to accept mortgage payments from Applicant. After the 90 days, it advised Applicant his payment would increase from \$1,000 a month to \$1,800. Applicant paid the amount for two months until his mother passed away, and he needed to assist his father. He contacted the mortgage company, and it advised him if he made the payment before the 15th of the month there would be no issue. Later, he was advised this was incorrect information, so it started another 90-day rehabilitation period. Applicant began experiencing financial problems because of the mortgage issue. He had difficulty completing the 90-day rehabilitation period. Despite his efforts, the mortgage company reinstated a new 90-day rehabilitation period three times, each time raising the monthly payments. Each time, Applicant fell further behind in his payments. The last time it increased his mortgage payment to \$2,400 a month. Applicant could not afford the payments. After spending two years trying to get the mortgage company to work with him, he finally gave up and the house foreclosed. Applicant provided documentation of the final judgment foreclosing the property, and the creditor agreement to waive any deficiency after its sale.⁵

Applicant credibly testified that this was the first home he had purchased, and he was unaware how an adjustable mortgage worked. He began experiencing financial difficulties when he tried to refinance the loan. He now lives in an affordable rental house.⁶

The debt in SOR ¶ 1.b (\$5,644) is for a truck Applicant purchased. Due to his mortgage issues, he had difficulty making his truck payments. He called the creditor to determine how much he needed to pay to keep the truck. He would then save the amount, call them again, and the amount would increase. He is aware that the truck has been sold. He does not believe the deficiency amount is correct. He asked the creditor to provide him with a document for the amount the truck was sold for, and it refused. He does not have the funds to pay this amount at this time.⁷

The debt in SOR ¶ 1.c (\$1,662) is a loan that was sold to a collection company. Applicant stated when he contacted the creditor he was advised the debt had increased to \$3,200. He is attempting to work out a payment plan. The creditor offered a plan where he would pay \$500 a month for six months, but Applicant cannot afford this amount. He does not have the money to pay at this time, but said he would contact the creditor when he has the money to resolve the debt.⁸

⁵ Tr. 21-40; AE A.

⁶ Tr.33-35.

⁷ Tr. 41-44.

⁸ Tr. 44-45.

The debt in SOR ¶ 1.d (\$1,600) is a military credit card. The amount was owed when Applicant was discharged from the Air Force. His income tax refund was diverted to repay this debt.⁹

The debt in SOR ¶ 1.e (\$1,578) was a payday loan. Applicant paid the debt over several months.¹⁰

The debt in SOR ¶ 1.f (\$1,049) is for a loan. Applicant stated he attempted to contact the creditor in 2012, but there was no phone number available. He has emailed the creditor, but cannot get a response. He stated he received the \$400 loan through an email application some time in 2010. Despite his attempts, he cannot find the creditor.¹¹

The debt in SOR ¶ 1.g (\$691) is for a charged off account. It was a loan for approximately \$4,000. He was making the loan payments until he began experiencing a problem with his mortgage refinancing. Applicant has a payment plan to pay \$52.05 a month. He provided verification that he is making payments.¹²

The debt in SOR ¶ 1.h (\$488) is for a bank credit card. Applicant stated he contacted the creditor and has been paying \$20 a month for the past eight months.¹³

The debt in SOR ¶ 1.j (\$140) is to a company that sells DVDs. Applicant received unsolicited DVDs and a letter saying if he did not want them he could return them. He was adamant that he did not request the DVDs. He contacted the company and told it he did not want the merchandise. He returned the DVDs. The creditor claims he owes the amount for the DVDs. Applicant has contacted the company and disputed the debt, but indicated his intent is to pay it to get it removed from his credit report.¹⁴

Applicant's wife works outside their home. He does not receive a performance evaluation because he is an hourly wage earner, but he has received two cash awards for his superior performance.¹⁵

⁹ Tr. 45-47; GE 2.

¹⁰ Tr. 47-48; AE D.

¹¹ Tr. 49-50.

¹² Tr. 51-52; AE B.

¹³ Tr. 52-54; AE D.

¹⁴ Tr. 55-58.

¹⁵ AE E, F.

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 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, 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 and 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 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 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 conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant has delinquent debts that he is unable to pay at this time. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant had difficulty transitioning from military to civilian life, and he was unemployed for several months. After purchasing a home he experienced financial problems when he tried to refinance it. The mortgage company kept delaying the rehabilitation program which each time would put him behind further in his payments. The house is in foreclosure, and Applicant is not responsible for any deficiency. Applicant has some remaining debts that are not resolved yet. AG ¶ 20(a) does not apply. The conditions noted above were beyond Applicant's control. Due to the mortgage issue, he fell behind with his other debts. He has paid or resolved those that he can afford, but is unable to pay the remaining ones at this time. Applicant is aware he must resolve these debts in the future and is hopeful as his earning power increases he will be able to resolve the remaining debts. AG ¶ 20 (b) applies.

Applicant has paid some of his debts, resolved others, and some remain to be resolved. Applicant is making payments through payment plans for two debts. He is hopeful that he can resolve the remaining ones. He has made efforts to address his finances. There are clear indications his financial problems are being resolved. I find AG ¶ 20(c) applies. Applicant made a good faith effort to resolve the debts in SOR ¶¶ 1.e, 1.g, and 1.h. Despite his attempts, he has been unable to find the creditor in SOR ¶ 1.f. AG ¶ 20(d) applies to those debts.

Applicant disputes the debt in SOR ¶ 1.j. I found his statements credible about his efforts to resolve this debt that he did not incur. He has a reasonable basis to dispute the legitimacy of the debt. AG ¶ 20(e) partially applies to this debt.

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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 33 years old. He began experiencing financial problems when his mortgage company reneged on refinancing his mortgage loan and caused him to fall behind on his payments. This affected his other financial commitments. He has not paid or resolved all of his debts, but he has also not ignored his obligations. He has contacted the creditors and paid some debts or has payment plans. He understands the importance of resolving his remaining debts. He is not living beyond his means. Despite having some remaining debts to repay, I do not believe they rise to the level of a security concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

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:	For Applicant
Subparagraph 1.i:	Withdrawn
Subparagraph 1.j:	For Applicant
Paragraph 2, Guideline E:	WITHDRAWN
Subparagraph 2.a:	Withdrawn

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. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge