



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-05426
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

10/09/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial security concerns.

Statement of the Case

On November 8, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), dated July 25, 2014, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order 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 in the DOD on September 1, 2006.

Applicant answered the SOR on September 29, 2014, admitting seven and denying eight of the allegations. Department Counsel was prepared to proceed on May 27, 2015, and the case was assigned to me on June 8, 2015. DOD issued a notice of hearing on July 2, 2015, scheduling a hearing for July 30, 2015. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 5. Applicant testified and submitted 12 exhibits that I marked and admitted without objection into the record as Applicant Exhibits (AX) A through L. I kept the record open to provide Applicant an opportunity to present additional information. Applicant timely submitted three additional documents that I marked and admitted into the record without objection as AX M to P. (GX 6, e-mail dated August 19, 2015) I received the transcript of the hearing (Tr.) on August 7, 2015. The record closed on August 19, 2015.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is 41 years old and has been employed by a defense contractor as a lead computer technician and instructor on a military base since 2011. Applicant received a bachelor's degree in computer science in 1999. He first married in January 2000 and divorced in September 2008. He married again in April 2008 and divorced in June 2015. He has two teenage children who live with him. He served for a short period in the Army before receiving a medical discharge because of an injury. He had two periods of unemployment from October 2006 until January 2007, and from July 2010 until November 2010. Applicant's monthly income is approximately \$2,371, with only minor monthly expenses since he is living with his parents. He has discretionary monthly funds now of about \$1,600. When he leaves his parents' home shortly, his rent will be \$800, leaving him with about \$800 monthly in discretionary funds. (Tr. 22-28, 59-63; GX 1, e-QIP, dated November 8, 2011)

The SOR alleges, and credit reports (GX 2, dated February 6, 2015; AX 3, dated December 5, 2013; AX 4, November 19, 2011) confirm the following debts for Applicant: telephone service or communication bills in collection for \$379 (SOR 1.a), \$877 (SOR 1.b), and \$107 (SOR 1.c); a credit card debt in collection for \$3,006 (SOR 1.d); medical debts in collection for \$93 (SOR 1.e), \$811 (SOR 1.f), \$88 (SOR 1.g), \$41 (SOR 1.h), \$14 (SOR 1.i), \$772 (SOR 1.j), and \$215 (SOR 1.k); a debt in collection for \$57 (SOR 1.l); a time share debt in collection for \$8,800 (SOR 1.m); a debt in collection for \$292 (SOR 1.n); and an insurance debt in collection for \$601 (SOR 1.o). The total amount of the alleged delinquent debt is approximately \$16,000. Half of the delinquent debt is for the time share debt.

Applicant attributes his financial issues to his two divorces. Prior to his first divorce, his first wife issued checks totaling approximately \$500 from their joint account that were dishonored. He was required to repay these checks. In the first divorce decree, his wife was ordered to pay for the time share and the car that Applicant had

co-signed for her. He informed the judge handling the divorce and custody legal issues that his former wife did not meet her financial responsibilities as directed by the court. However, no action was taken by the court. (Tr. 30-32)

Applicant's first divorce affected his health and he incurred medical debt from emergency room visits. (SOR 1.c, 1.d, 1.e, 1.f, and 1.g) He did not believe he had medical debts since he has health insurance and always made co-payments. He has no knowledge of any medical debts. (Tr. 32-33)

Applicant was the sole source of income for a family of six in his second marriage. His wife was unable to keep a good job. She would start work, lose her job, apply for and receive unemployment benefits until the benefits expired. What money she did earn was used only for her and her two children, and not for Applicant and his two biological children. His money was used for every member of the family. When his second wife left him, the two credit cards she used were delinquent and in collection. Applicant has since paid and resolved those two debts. (Tr. 33-34; AX H, Divorce Information, dated June 26, 2015)

Applicant was not aware of his delinquent debts until he was interviewed by the OPM agent. The day after the interview, he contacted a credit counseling firm to assist him in resolving his delinquent debts. He did not understand all of the information on his credit report until he discussed the report with the counseling service. He has been paying the credit counseling firm \$99 monthly since then to assist him. They provided him with letters to send to the credit reporting agencies disputing some of his debts. (Tr. 54-58)

Applicant disputed a number of the debts, to include his medical debts, attributed to him on the credit reports. He disputed most of the debts because they were his first wife's debts and not debts attributed to him. He also disputed some debts because the debts were paid. The following debts, denied in Applicant's response to the SOR, have been removed from his credit report by the credit reporting agencies as not his debts: SOR 1.a, 1.b, 1.c, 1.d, 1.m, and 1.n. (Tr. 36-38, 50-51; AX B, Credit Report Removals, dated July 29, 2015) Applicant provided receipts that he paid and resolved the following SOR debts: SOR 1.e, SOR 1.f, SOR 1.g, SOR 1.h, and SOR 1.j. (Tr. 38-46, 47-48; AX A, Paid-in-Full Letter, dated July 16, 2015; AX C, Receipt, dated December 8, 2007; AX D, Receipt, dated August 29, 2005; AX E, Receipt, dated June 8, 2015; AX F, dated June 8, 2015; and AX G, dated June 8, 2015; AX I, Receipt, dated July 16, 2015) Applicant also noted that he paid the \$14 debt at SOR 1.i, and the \$215 medical debt at SOR 1.k. However, he no longer has receipts for these two paid debts. After the hearing, Applicant contacted the creditor and learned that they did not have a listing for his debt. They did have receipts for other medical debt that he did pay. (Tr. 46-47; 63-64; AX M, Letter, dated August 18, 2015)

Applicant disputed the time share debt at SOR 1.m. on the basis that under the divorce decree, his first wife is responsible for the debt. He has another time share in his name in the same complex as the one in dispute and the payments are current. He

has not heard directly from all of the credit reporting agencies on this debt, but it has been removed from his credit report by at least one of the agencies. (Tr. 47-50) As for the insurance debt at SOR 1.o, Applicant contacted the insurance company about the debt since he currently has insurance with the same company. The insurance company has no record of the debt and could not explain it. It is no longer on his credit report. The company does not have an active collection account for this debt in Applicant's name. (Tr. 50-52; AX M, e-mail, dated August 19, 2015)

Applicant also paid a debt not listed on the SOR. (Tr. 52-55; AX J, Bank Statement, dated July 13, 2015) He also provided credit reports that show other debts have a zero balance. (AX K, undated) or are current (AX L, undated). Applicant does not believe he has any delinquent debts at this time. After the hearing, he presented copies of his latest credit reports. The reports do not reflect any accounts that are currently delinquent. (Tr. 53-56; AX M, AX N, and AX O, Credit Reports, dated, August 18, 2015)

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 must be considered 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.

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 in seeking 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 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.

Analysis

Financial Considerations

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. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or 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 repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is at risk of acting inconsistently with holding 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.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant had financial difficulties after his first divorce in 2008, and from his second marriage which ended in 2015. His first wife did not pay the debts she was required to pay under the divorce decree. He was the sole source of income for his family of six in his second marriage, and the family incurred delinquent debt. Applicant's history of delinquent debts is documented in his credit report, his OPM interview, and his testimony at the hearing. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy debt.

I considered the following Financial Considerations Mitigating Conditions under 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;

(b) the conditions that resulted in the financial problems 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;

(d) the individual has initiated a good-faith effort to repay the 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.

Mitigating conditions AG ¶¶ 20(a), (b), (c), and (d) apply. Applicant incurred delinquent debt after his first divorce and when his first wife did not fulfill the financial requirements of the divorce as directed by the court. He also had financial issues from his second marriage because he was the sole income for six people and his wife did not adequately contribute to the family income. The family could not pay all of their delinquent debts on his income alone. The conditions that led to his delinquent debt were beyond his control, and are unlikely to recur since he is no longer married. He has acted responsibly towards his debts by disputing debts that he did not believe were his debts and had them removed from his credit report. He paid and resolved those debts that he was aware were his debts. Since he used a credit counseling firm to assist him, it is clear that he was receiving financial counseling, and he has resolved his debts and they are under control.

Applicant established his good-faith initiative to pay his debts. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan. Applicant has established a meaningful track record of debt

payment. He disputed many of his debts and paid the debts that he knew were his debts. He does not believe he has any delinquent debts at this time, and his latest credit reports do not currently reflect any delinquent accounts. By paying and being current with his debts, Applicant has shown that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his finances.

Applicant has shown that he is managing his personal financial obligations reasonably and responsibly, and his financial problems are behind him. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information, I conclude that Applicant has mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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. Applicant disputed many of the SOR debts as either not his debt or that they had been paid. The credit reporting agencies have found in favor of Applicant on the disputes and removed half of the SOR debts from their reports. He presented evidence that he paid the remaining delinquent debts, and that he now has no delinquent accounts. This information shows Applicant's responsible management of his finances. Applicant presented sufficient information to establish that he acted reasonably and responsibly towards his finances, and that he will continue to responsibly manage his financial obligations. Overall, the record evidence leaves me without questions or doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is granted.

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.o 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.

THOMAS M. CREAN
Administrative Judge