



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 12-05507

Applicant for Security Clearance

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel

For Applicant: *Pro se*

01/20/2015

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 January 2, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) sent interrogatories to Applicant after an investigation conducted by the Office of Personnel Management (OPM). After reviewing the results of the OPM investigation and the responses to the interrogatories, DOD could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated July 16, 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 August 14, 2014. He admitted 5 and denied 10 of the 15 allegations of delinquent debt. His denials were based on the fact the debts were paid. Department Counsel was prepared to proceed on September 23, 2014, and the case was assigned to me on September 26, 2014. DOD issued a Notice of Hearing on October 21, 2014, scheduling a hearing for November 19, 2014. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified. I kept the record open for Applicant to submit documents. Applicant timely submitted seven documents that I marked and admitted the documents into the record as AX A through H. Department Counsel had no objection to the admission of the documents. (GX 6, e-mail, dated December 10, 2014) I received the transcript of the hearing (Tr.) on December 2, 2014.

Findings of Fact

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

Applicant is 52 years old, and has been a chemical handler in a shipyard since May 1990. He served on active duty in the Army from August 1982 until February 1988 when he was honorably discharged. He married in June 1997 and divorced in February 2014. He and his wife did not have children but she had three children from a previous marriage. He does not have a support obligation for the children. Applicant's net monthly income is approximately \$3,500, \$2,800 from normal salary and \$700 in average monthly overtime. His monthly expenses are approximately \$3,100. This includes funds he is using to fix his grandparent's residence where he now lives. He has a monthly discretionary remainder of approximately \$400. (Tr. 10-16, 51-56; GX 1, e-QIP, dated January 22, 2012)

The SOR alleges and credit reports (GX 3, dated March 7, 2012; GX 4, dated November 5, 2013) confirm the following delinquent debts: a \$72 collection account (SOR 1.a); \$843 in collection for a phone company (SOR 1.b); four collection accounts from the same collection agency for \$148 (SOR 1.c), \$473 (SOR 1.d), \$57 (SOR 1.e), and \$270 (SOR 1.h); a medical account for \$129 (SOR 1.f); a credit account for \$409; a collection account for \$92 (SOR 1.i); a collection account for \$100 (SOR 1.j); a foreclosed mortgage with a remaining debt of \$39,703; and duplicate debt to a timeshare company of \$1,374 (SOR 1.l and 1.m). Also listed on the credit reports are a Chapter 7 bankruptcy filed in July 2004 with debts discharged in October 2004 (SOR 1.n), and a Chapter 13 bankruptcy filed in July 1995 with debts discharged in May 2000 (SOR 1.o). The total amount of the delinquent debt is approximately \$43,000, with the overwhelming majority of the debt in a foreclosed mortgage debt.

Applicant experienced financial problems because he was helping and supporting his family. Applicant purchased a house with his mother in 1989. He was not married at the time and working at the shipyard making a good salary with a significant amount of overtime. He and his mother were current with the mortgage when he lived in the house with her. He stayed in the house for about two years before moving out. He rented his grandparents' house to live in with another relative. His sisters moved into the house and his mother and sisters paid the mortgage and other bills. His mother remarried a short time later and moved out of the house leaving his sisters in the house. One sister left the house leaving his other sister and her two young sons. The sister was addicted to drugs and did not pay the mortgage or provide for her children. Applicant had to help her and her family by paying the mortgage and providing food and clothing for the boys. He could afford to take care of his needs and his sister's family because he was single and receiving overtime pay. (Tr. 16-25; GX 2, Personal Subject Interview, dated April 3, 2012, at 3-5)

Applicant married in 1997. After a few years, he could no longer afford to support both his immediate family and his sister and her sons. He became overwhelmed by the needs of two households and two families. He was unable to stay current on the mortgage payments for both his residence and the house where his sister lived. The sister's residence was finally foreclosed in 2011 resulting in a mortgage foreclosure debt. He also was unable to pay other debts. Since he is now single, he is working to repair his credit rating. Applicant's response to the SOR stated that most of the debts were paid in full. Applicant testified at the hearing that most of the debts were paid, but he did not have documentation to show the debts were paid. The record was held open for him to provide documentation of the paid debts. (Tr. 25-31)

Applicant started to resolve his debt issues about two weeks before he received the SOR. He discussed his financial problems with a credit counselor over the phone, but he has not met with her in person. (Tr. 31-34)

The debt at SOR 1.a is from an overdrawn bank account. The debt has been paid in full. (Tr. 35-36; AX A, Bank Letter, dated November 21, 2014)

The debt at SOR 1.b is a cell phone debt. Applicant entered a payment plan and the debt is paid in full. (Tr. 36-37; AX B, e-mail, dated November 24, 2014)

The debts at SOR 1.c, 1.d, 1.e, and 1.h are with the same collection agency. The debts have been paid in full. (Tr. 37-41; AX C, Paid in Full Letter, dated November 25, 2014)

The creditor for the \$129 medical debt at SOR 1.f is unknown. Applicant has no information on the debt and he is unable to make payment arrangements. (Tr. 40-41)

The debt at SOR 1.g is from his former wife's gym membership. Applicant is paying the debt under a payment plan. The remaining balance is \$590. (Tr. 41-42; AX H, Receipt, dated January 15, 2015)

The debt at SOR 1.i is a medical debt. It has been paid in full (Tr. 43; AX D, Paid in full Letter, dated November 25, 2014)

The debt at SOR 1.j is for a lawn service. The debt has been paid in full. (Tr. 43; AX E, Paid in Full Letter, dated November 25, 2014)

The debt at SOR 1.k is for the remaining debt after the foreclosure of the mortgage at his original house. The mortgage was paid by Applicant or his mother for over 20 years. He believes the balance on the mortgage loan at the time of foreclosure was \$35,566. In the three years since the foreclosure, Applicant has not been contacted by the mortgage company informing him that he has a deficit from the foreclosure. He is not aware of a mortgage loan debt. The amount of the mortgage loan debt listed in the SOR and credit reports is approximately the same amount as Applicant believes was the remaining debt at foreclosure. He does not know if he received credit for the amount received when the house was sold. He is current with the mortgage on his present residence. (Tr. 43-44; GX 2, Personal Subject Interview, dated April 3, 2012, at 2; AX G, Account Statement, dated November 9, 2014)

The debts at SOR 1.l and 1.m are duplicate debts from a timeshare. His former wife pays the monthly maintenance assessment automatically from her account. The debt is current and the creditor has notified the credit reporting agencies that the debt should be removed from Applicant's credit report. (Tr. 45-47; AX F, Statement, dated November 19, 2014)

Applicant filed a Chapter 7 bankruptcy in July 2004. Applicant has no documents pertaining to the bankruptcy. But credit reports do confirm that the debts were discharged in October 2004. Applicant also filed a Chapter 13 bankruptcy in July 1995. The debts were discharged in May 2000. (Tr. 47-48; GX 3, Credit Report, dated March 7, 2012; GX 4, Credit Report, dated November 5, 2013)

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.

Applicant incurred debts because he was trying to support two households, his own and his sister's. The delinquent debts, as established by Applicant's statements and credit reports, raise 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 a history of 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 and/or there are clear indications that the problem is being resolved or is under control; and

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

Applicant encountered financial issues because he was being a good provider for his family as well as trying to maintain his sister's household. He became overwhelmed and could not keep up with the financial demands of both households. His financial problems were encountered under unusual circumstances that are not likely to recur. His sister's drug use presented a condition beyond his control. He did not have to assist her but it was the right and humane course of action to provide for her and her sons. Applicant acted responsibly by contacting his creditors and paying most of the delinquent debt. AG ¶¶ 20(a) and (b) apply.

Applicant contacted a credit counselor and had telephone conversations with her. They never met in person. However, even though they have not met in person, AG ¶ 20(c) applies since Applicant has established a plan to pay his debts and his financial problems are being resolved and are under control.

For AG ¶ 20(d) to apply, 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 in the future 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 paid or resolved ten of the debts. This includes one debt that is a duplicate and a foreclosed mortgage that has been resolved. He has not learned sufficient information to identify one debt and make payment arrangements. He has a payment plan and is paying his last debt. Applicant has shown his good-faith effort to resolve the debts and his actions are a reasonable, prudent, honest, adherence to his financial obligations and duties. He established a meaningful track record of debt payment. AG ¶ 20(d) applies.

Applicant filed a Chapter 13 bankruptcy approximately 20 years ago and the debts were discharged. He filed a Chapter 7 bankruptcy ten year ago and the debts were discharged. Bankruptcy is a legal and legitimate means of resolving debt. Since the bankruptcies were many years ago and the debts resolved, they are no longer a financial security concern.

Applicant has shown that he manages his personal financial obligations reasonably and responsibly, and his good financial conduct is likely to continue. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information available to include the information provided by Applicant, 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 presented sufficient information to establish that he acted reasonably and responsibly towards his finances. His financial track record establishes confidence in the management of his financial obligations. This indicates he will be concerned and act responsibly in regard to classified information. Overall, the record evidence leaves me without questions and 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