



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



In the matter of:)
)
) ISCR Case No. 12-05862
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: Betty Gonzalez, Esquire and Michelle Daugherty, Esquire

01/09/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on February 29, 2012. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on July 28, 2014, detailing security concerns under Guideline F, financial considerations. 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 For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR, and he submitted a notarized, written response to the SOR allegations dated August 20, 2014. He requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on October 8, 2014. Applicant received the FORM on October 20, 2014. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Through counsel, he submitted a response dated November 14, 2014.¹ Applicant's counsel resubmitted the previously submitted documents in support of his request for a security clearance on November 25, 2014. DOHA assigned this case to me on December 15, 2014. The Government submitted eight exhibits, which have been marked as Items 1-8 and admitted into the record. Applicant's response to the SOR has been marked as Item 3, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A1 - Applicant Exhibit A5 (AE A1 - AE A5).

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR with explanation. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 29 years old, works as a firefighter and emergency medical technician (EMT) for a federal contractor to the National Aeronautics and Space Administration (NASA). He began his current employment in December 2011. Applicant works 24 hours a month as an EMT and firefighter for a local fire and rescue service and has since 2004. He worked one year (November 2008 to November 2009) in Iraq as a firefighter. Applicant's direct supervisor praises his professionalism and his skills as a firefighter and as an EMT. His company's assistant fire chief also praises his professionalism and skills and considers him a valued member of their firefighting team. Between 2003 and 2008 and after his return from Iraq, Applicant worked as a cook, a technician, a taxi driver, a customer service representative, and an EMT. Although his salary is unknown, these are not high income jobs.²

Applicant graduated from high school in 2003. He received his EMT license in October 2007, a firefighter certificate in June 2008, and an aircraft rescue firefighter certificate in 2011. He regularly participates in training to maintain and upgrade his

¹On November 18, 2014, through counsel, Applicant requested Department Counsel until November 25, 2014 to submit additional information in response to the FORM. Department Counsel agreed.

²Items 4, 8; AE A1.

skills. Applicant is not married, but he has a seven-year-old daughter. He and his daughter's mother equally share custody, and he pays \$550 a month in child support.³

In 2007, shortly before his daughter was born, Applicant and his daughter's mother established a home together, but they did not marry. Their relationship and living arrangement lasted approximately five months. During this time, they incurred additional expenses, which their dual income supported. When the relationship ended later in 2007, the debts of both parties became Applicant's sole responsibility. Initially, he paid the debts with small monthly payments, but after awhile, he was unable to continue all his payments and meet his necessary living expenses. He defaulted on the debts listed in the SOR, and several other debts not listed in the SOR.

Applicant eventually contacted his creditors, trying to work out a resolution of his debts. The creditors would not agree to a payment plan which Applicant could pay or to allow forbearance of his debts. He also contacted a credit counseling company to help him resolve his debts, but he could not afford the payment plan it established, as the plan did not reduce his monthly payments. A credit counseling company referred him to the law firm which now represents him in this case and with managing his debts. The law firm advised that he received financial and credit counseling with it. The law firm developed a strategic plan to resolve his debts. The plan is not clearly outlined in its letter of March 18, 2014.⁴

The record contains three credit reports dated March 14, 2012, January 10, 2014,⁵ and November 10, 2014. All three credit reports reflect that Applicant paid a \$13,000 debt following a negotiated settlement. The March 2012 credit report indicates that Applicant paid a bank collection debt and that he brought two other past-due accounts current and paid the debts in full. The January 2014 and the November 2014 credit reports also indicate that he was past due up to 90 days on a bank auto loan and that he brought this debt current and paid it in full.⁶

The six debts listed in the SOR are also listed on the March 2012 and January 2014 credit reports. Applicant provided proof that he paid the debts in SOR allegations 1.e (\$520) and 1.g (\$330); the latter debt was sold after the issuance of the SOR to another collection agent. The March 2012 credit report supports Applicant's assertion that the debt in SOR allegation 1.d (\$494) and 1.f (\$494) are the same.⁷

³Items 4, 8; AE A3.

⁴Item 5.

⁵This credit report was confusing and difficult to read and review.

⁶Items 6 and 7; AE A5.

⁷Items 6 and 7.

Applicant's counsel indicated in the August 20, 2014 response to the SOR that the debts listed in SOR allegation 1.a (\$11,059), 1.b (\$9,049), and 1.c (\$6,373) had been eliminated. This statement is supported by the November 10, 2014 credit report, which does not list these three debts.⁸ All three credit reports reflect that Applicant incurred the SOR debts between May 2007 and March 2008 and that he has not incurred any unpaid bills or debts since this time, except for the \$494 debt, which resulted from a 2009 charge for early cancellation of his cell phone contract, when the service did not work. For last five years, Applicant has paid his bills as required.⁹

In March 2012, Applicant moved to a residence with lower rent. He provided documentation showing that he pays his electric bill and his telephone bill in full every month. He hired an attorney to help him resolve custody issues with his former girlfriend. The attorney verified that he paid all charges and fees incurred as part of the representation, which ended around April 2014. Applicant has not provided a budget or a copy of his earnings statement to assess his overall expenses and income. His attorney states that he lives within his income and has sufficient income to pay his living expenses.¹⁰

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.

⁸Item 3; AE A5.

⁹Items 6, 7; AE A5.

¹⁰Items 3 and 8; AE A3; AE A4.

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. . . .” An applicant has the ultimate burden of persuasion for 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 an 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 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 relating to the guideline 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems when he and his former girlfriend ended their relationship in 2007. Most of the debts listed in the SOR had not been resolved when the SOR was issued. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and 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, 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 initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has not incurred any large outstanding debts since 2008 and none since late 2009. He lives within his current income and pays his bills. He lowered his rental costs when he moved in 2011. His debts arose when his relationship ended, and he became responsible for all the debts incurred during the relationship. Over the last five years, he has slowly worked to resolve his debts. He made decisions about which debts he could continue to pay and which debts would be paid later. He brought several past-due debts current, then paid the debts in full. He negotiated a settlement on a \$13,000 debt not listed in the SOR and paid the debt some time ago. He paid another non-SOR debt as well as two SOR debts. He is acting responsibly about his debts. He unsuccessfully tried to negotiate with his creditors. He next tried to consolidate his debts, but was unable to qualify or to pay the monthly payment. More recently, he retained the services of a law firm to help him resolve his remaining debts. He received financial and credit counseling through this firm. He made a good-faith effort to negotiate and settle two of his smaller debts. AG ¶¶ 20(a) through 20(c) apply and AG ¶ 20(d) applies to SOR allegations 1.e and 1.f.¹¹

¹¹SOR allegations 1.a to 1.c have been eliminated. The record does not reflect whether Applicant disputed these debts. Without this information, I cannot determine if AG ¶ 20(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" applies.

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching

a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant’s problems first began when he and his girlfriend ended their relationship. Applicant was only 22 years old at that time. (See AG ¶ 2(a)(4).) His accumulated debt is due to the termination of this relationship, a circumstance largely beyond his control. (See AG ¶ 2(a)(2).) Since that time, Applicant has undergone significant behavioral changes. He endeavored to pay the debts, but eventually chose to make sure his basic living expenses were paid each month. He attempted to work out payment plans with the creditors, but the creditors declined to work with him. He then tried to consolidate his debts, but the repayment amount was excessive. Over time, he brought several debts current and then paid the debts in full. He also paid one large debt and one other debt. He continued to seek help to resolve his debts. Less than a year ago, he retained legal representation to help resolve his remaining debts. Since then, he has resolved all but one \$500 debt.

Applicant’s actual monthly income and full monthly expenses are unknown. However, his credit reports show that he has not incurred new, unpaid debts in five years nor has he opened multiple credit accounts. The file lacks any evidence that Applicant has been living beyond his income since 2008. He has taken steps to reduce his living expenses, which helps him to control his expenses. Applicant’s actions give him control over his finances and debts. He is active in his daughter’s life. Most significantly, he has taken affirmative action to pay or resolve the delinquent debts that raised security concerns. (See AG ¶ 2(a)(6).) His one unresolved debt is less than \$500 and cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all his debts are paid: it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. While one debt remains unpaid, it is insufficient to raise security concerns. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances under Guideline F.

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.g: 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.

MARY E. HENRY
Administrative Judge