



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



In the matter of:)
)
) ISCR Case No. 12-06481
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

05/19/2015

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s financial problems began after a series of layoffs that occurred over two years between 2009 and 2011. Since his employment has stabilized, he has gradually begun addressing his debts, either satisfying them in their entirety or satisfying them through payment plans. Applicant has mitigated the security concern. Clearance is granted.

Statement of the Case

On July 29, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued an SOR to Applicant 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

On September 11, 2014, Applicant answered the SOR, admitting subparagraphs 1.b through 1.e, and 1.l through 1.n, and denying the remainder. He requested a hearing; whereupon the case was assigned to me on January 12, 2015. DOHA issued a notice of hearing on December 12, 2014, scheduling the hearing for January 15, 2015. The hearing was held as scheduled. At the hearing, I received six Government exhibits (GE 1 through GE 6), seven Applicant exhibits (AE A through AE G), together with the testimony of Applicant and three character witnesses.

At the close of the hearing, I left the record open, at Applicant's request, to allow him to submit additional exhibits. Within the time allotted, he submitted five additional exhibits that I incorporated into the record as AE H through AE L. DOHA received the transcript (Tr.) on March 20, 2015.

Findings of Fact

Applicant is a 34-year-old single man with one child, age four. He graduated from high school in 1998 and obtained an associate's degree in electronics, computers, and telecommunications studies, in 2000. (GE 1 at 10) Since December 2011, he has worked for a defense contractor in the field of network engineering.

Applicant is highly respected on the job. According to his supervisor, he is "a conscientious employee who is a solid performer and a reliable and stalwart team member." (AE A) According to the senior technical lead for the client whom Applicant's company serves, he is an exemplary employee who "goes above and beyond to help the end user." (AE B)

Applicant began working for his first employer after graduating from community college in 2001. His employer changed four times over the years, through buyouts. (Tr. 41) Each time a new company took over, there were layoffs. (Tr. 41) Nevertheless, Applicant managed to thrive, earning a promotion after his third year. (Tr. 41) In December 2009, however, his job was outsourced overseas, and he was laid off. (Tr. 42)

Subsequently, Applicant was unemployed for the next five months through April 2010. (GE 1 at 15) He gradually began falling behind on his bills. He attempted to satisfy his delinquent debts after he obtained employment, but his efforts were sidetracked after he was laid off again in March 2011. (GE 1 at 28, 31) He was subsequently unemployed for six weeks. Applicant regained another job in April 2011, but then was laid off again in September 2011, whereupon he was unemployed for the next two months. (GE 1 at 12)

Applicant's current employer hired him in December 2011, and he has been working for them without interruption since then. (GE 1 at 12) By the time his employment stabilized, however, he had incurred approximately \$32,000 of delinquent debt, including an \$18,000 delinquent automobile loan (subparagraph 1.n); \$10,100 in student loan debts (subparagraphs 1.i through 1.m); \$970 in medical bills (1.c through

1.h); utility bills totaling \$260 (1.b, 1.p through 1.s); and \$3,200 of miscellaneous debts (1.a, 1.o).

Subparagraph 1.a totalled \$1,300. In February 2014, Applicant began paying it in monthly increments of approximately \$400. (AE K at 3) By September 2014, he had satisfied it. (Answer at 1)

Subparagraph 1.b is a delinquent utility bill totalling \$1,094. It stems from a cable TV box that Applicant allegedly did not return when he cancelled the service. Applicant initially disputed this bill. He then reached an agreement with the creditor whereupon he would satisfy the bill in \$218 monthly increments. (Answer; AE J at 3) Applicant made his first payment in September 2014. (AE J at 3) He provided no proof documenting any subsequent payments.

The SOR does not specifically identify the respective medical creditors in subparagraphs 1.c through 1.h. It only lists account numbers. After researching these creditors, he concluded that 1.c through 1.e were held by a collection agent for a hospital where he received treatment (AE L), and 1.f through 1.h were bills for miscellaneous medical services. (AE K at 2) As of March 2015, Applicant had satisfied subparagraphs 1.c through 1.e. (AE L) He satisfied subparagraphs 1.f through 1.h in a \$640 lump-sum payment. (AE K at 2)

In March 2014, Applicant consolidated the student loans listed in subparagraphs 1.i and 1.m. Since then, he has been making monthly payments ranging from \$150 to \$400. (AE F at 1) As of March 2015, the balance was \$9,668. (AE F at 2) These accounts, as consolidated, are no longer in delinquent status.

Applicant financed the purchase of a car through the creditor listed in subparagraph 1.n in June 2008. (GE 2 at 6) Applicant fell behind on the monthly payments during his first layoff. After he obtained another job, Applicant attempted to schedule a repayment plan. Before he could execute it, he was laid off again in March 2011, prompting the creditor to repossess the car. (GE 2 at 6) The creditor returned the car to Applicant after he paid approximately \$3,000 of the delinquency, with the understanding that Applicant would resume monthly car payments. (Tr. 61)

By August 2011, Applicant had again encountered trouble paying the car note. He began making partial payments. (Tr. 62) Applicant stopped the partial payments at or about the time he was laid off in September 2011. After obtaining employment in 2011, Applicant contacted the creditor to resume a payment plan. (Tr. 63) The creditor rejected Applicant's offer and demanded the full balance. (Tr. 64) Applicant was unable to pay the full balance, and the creditor charged off the debt. (Tr. 64)

The creditor did not repossess the car again. The car is no longer operable because of major transmission problems. (Tr. 63)

Subparagraph 1.o totals \$1,876. After identifying the collection agent, Applicant negotiated a lump-sum settlement of \$624 and paid it in February 2014. (AE K at 2; Tr. 52-53) Applicant also satisfied subparagraphs 1.p, totaling \$772, and subparagraphs 1.q, totalling \$30, in full, in February 2014. (AE K at 3; Tr. 53)

Applicant disputes the utility, a cable television bill, listed in subparagraph 1.r, totalling \$403. He has been receiving services from the same provider since June 2013, and when he inquired into past delinquencies, he was told he owed none. (AE R)

Applicant does not recognize the debt, totalling \$294, listed in subparagraph 1.s. Efforts at identifying it through calling several collection agencies were unsuccessful.

Applicant maintains a budget. He earns \$95,000 annually, and he has approximately \$1,800 of monthly discretionary income. (GE 2 at 15)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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) Between 2010 and 2012, Applicant incurred approximately \$32,000 of delinquent debt. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 did not start experiencing financial problems until he lost his job in December 2009. Initial efforts at paying his debts were hindered by two subsequent job losses over the next two years. Since gaining his current job, he has contacted creditors and begun addressing his delinquencies by either satisfying them in their entirety or satisfying them through payment plans. Currently, his consolidated student loan accounts are no longer in delinquent status, and he has satisfied approximately \$4,000 of his delinquent debt.

Applicant was unable to negotiate a payment plan that was satisfactory to the car lender, as listed in subparagraph 1.n, and the debt was subsequently charged off. However, any negative inference generated by this unsatisfied delinquency is outweighed by the positive security inferences, including his substantial monthly discretionary income, the cause of his delinquencies, his credibility, and his strong character, as demonstrated by his sterling character references. I conclude that AG ¶¶ 20(b) through 20(d) apply.

Applicant disputes 1.r, an allegedly outstanding bill owed to a cable television company for \$403, contending that he currently is using the same company, and the representative told him that he owed nothing. Although he provided no substantiating evidence supporting this contention, which would trigger the application of AG ¶ 20(e), I conclude that his explanation was credible. In reaching this conclusion, I considered the significant documentary evidence that he provided supporting his resolution of the other SOR debts. Also, SOR subparagraph 1.r, even if unresolved, is nominal in comparison to the other bills that Applicant has resolved. Applicant's inability to identify and resolve subparagraph 1.s is similarly insignificant because of its nominal value.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Applicant's financial problems were not caused by profligate spending. Instead they stemmed from three layoffs that occurred within a two-year period. Since Applicant's employment has stabilized, he has begun satisfying his debts. He is highly respected on his job and earns a lucrative salary that, per his budget, affords him with ample discretionary income to continue to execute his payment plans in the future. Considering this case in the context of the whole-person concept, I conclude Applicant has mitigated the security concern.

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.s:	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.

MARC E. CURRY
Administrative Judge