



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



In the matter of:)	
)	
)	ISCR Case No. 12-06896
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

03/30/2015

Decision

DAM, Shari, Administrative Judge:

The Statement of Reasons (SOR) alleged that Applicant owed four delinquent debts totaling \$29,000. Applicant provided proof that he had previously resolved two timeshare debts, which totaled \$13,650. He is resolving two credit card debts, which now have a combined balance of about \$11,000. He is demonstrating a good-faith effort to resolve financial obligations. Financial security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On January 24, 2012, Applicant submitted a security clearance application (SCA). On September 22, 2014, the Department of Defense (DoD) issued Applicant an SOR, 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On October 20, 2014, Applicant answered the SOR (Answer), and requested a hearing. On December 15, 2014, the Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On January 2, 2015, DOHA issued a hearing notice, setting the case for January 21, 2015. The hearing was held as scheduled. At the hearing, Department Counsel offered five exhibits (GE) and Applicant offered eight exhibits (AE) into evidence. (GE 1-5; AE 1-8.) All were admitted. DOHA received the hearing transcript (Tr.) on February 3, 2015; and I received it on February 23, 2015. The record remained open until February 12, 2015, to give Applicant an opportunity to submit additional information. That deadline was extended to February 23, 2015, without objection by Department Counsel. On February 19, 2015, Applicant submitted AE 9 through 12, which I admitted into the record without objection from Department Counsel.

Findings of Fact

Applicant admitted all allegations contained in SOR. His admissions are accepted as factual findings.

Applicant is a 68-year-old employee of a defense contractor. He and his wife have been married for more than 46 years. They have two adult children. He has a bachelor's and a master's degree. He enlisted in the Air Force in 1973 and retired honorably in 1996 in the rank of lieutenant colonel. (Tr. 19-22; GE 1.) He held a security clearance while serving in the military, and three years before he enlisted while working for a nuclear plant. (Tr. 31.)

In 1996, after retiring from military service, Applicant began a position with a federal contractor. He worked there until 2000 and then moved to another federal contracting position. In 2004 he started a position with a federal contractor in his home state and worked for the company into November 2007 when he was laid off because the company lost a federal contract. (Tr. 25.) In February 2008 he started working for a timeshare company, where he remained until September 2008 when he went to work for another timeshare company. In October 2008 that company laid him off along with 20 other sales' employees for financial reasons. He was unemployed from October 2008 until April 2009 when he began a position with defense contractor. He has worked for defense contractors since then. (Tr. 26-30; GE 1; Answer.)

Applicant began experiencing financial difficulties after he lost his position in November 2007 and was unemployed for three months and then again from November 2008 to March 2009. His income decreased from \$88,000 in 2007 to \$20,000 in 2008. In 2009 he earned \$48,000. As a consequence of the loss of income, he borrowed from his 401(k) in order to pay living expenses. He continues to make monthly payments of \$400 on that loan. (Answer.) He also explained that in January 2010 he began renting

his prior residence after he moved to another state for his job. From that time until May 2014, the tenants failed to pay rent half of the time. Until they were evicted, Applicant paid the \$1,500 mortgage on his house and \$1,500 in rent for an apartment, which decreased his monthly income. The current tenants are responsible, and he now is able to save an additional \$1,500 every month. (Tr. 52-53, 55, 79.)

Based on credit bureau reports (CBR), dated February 2, 2012; August 27, 2014; and December 19, 2014, the SOR alleged four delinquent debts that totaled \$29,040 and became delinquent in 2008 and 2009. (GE 3, GE 4, GE 5.) The status of each debt is as follows:

SOR ¶ 1.a: The \$6,539 debt was owed to a timeshare company for a purchase Applicant made in 2001. He stopped making payments in 2007 when he lost his job. (Tr. 37.) He believed the debt had been cancelled. (Tr. 39.) The company acknowledged that the matter was incorrectly reported to credit reporting agencies. It informed Applicant that the debt will be removed from his CBR, as it never should have been reported. It is resolved. (AE 12.)

SOR ¶ 1.b: The \$6,110 debt is owed to a credit card company and became delinquent in 2008. Applicant said that he contacted the company several times but never received a return call. (Tr. 42.) In February 2015, he entered into an agreement to make monthly payments of \$200 on the debt. (AE 11.) It is being resolved.

SOR ¶ 1.c: The \$7,111 debt was owed to a timeshare company for a purchase. Applicant stopped making payments in 2007 or 2008. (Tr. 45.) He believed this matter was resolved. The company confirmed that the debt was canceled in January 2010 and that Applicant did not have any financial obligations related to it. The debt is resolved. (AE 10.)

SOR ¶ 1.d: The \$9,281 debt is owed to a credit card company and is being paid by monthly payments of \$200. In May 2014 Applicant settled the debt for \$6,700, and has made payments since then. The balance is \$4,900. (Tr. 45-47; AE 2, AE 3, AE 4.) It is being resolved.

In summary, Appellant resolved \$13,650 of the \$29,040 SOR-alleged debts; and is resolving the remaining \$15,390, of which he has paid or resolved \$4,381. His annual income is about \$140,000, and includes his salary, military retirement, and social security benefits for him and his wife. (Tr. 34-45.) He submitted a budget spreadsheet that tracks his income and records payments of expenses. (AE 9.)

Two witnesses testified for Applicant. A colleague who works with Applicant testified. The witness retired from the Air Force after 23 years. He has held a security clearance for 42 years. He has known Applicant for over 20 years and hired him for his current position. (Tr. 67.) He testified that Applicant is "very diligent in doing his duties" and "trustworthy." (Tr. 71.) Applicant's pastor testified. He has known Applicant for six

years. He stated that Applicant is of the highest integrity,” and spends much of his free time volunteering at their church. (Tr. 74.) The Chief Executive Officer/Facilities Security Officer wrote a letter of recommendation for Applicant. He stated that he has “absolutely no concerns regarding [Applicant’s] eligibility for a security clearance based on my interaction with him professionally and socially.” (AE 7.)

Applicant stated, “I have served this country for forty years and hope to continue to do so.” (Tr. 32.) He said that he and his wife are “not living beyond our means.” (Tr. 62.)

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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 avoided drawing 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, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 two conditions that could raise security concerns and may be disqualifying in this case:

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

Between 2008 and 2009, Applicant accumulated debts that he was unable or unwilling to resolve until 2014 and later. The evidence is sufficient to raise both potential disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

- (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 offered some evidence that his financial problems arose as a result of periods of unemployment during 2008 and 2009, and a tenant who did not regularly pay rent from January 2010 until May 2014. Those were circumstances beyond his control. However, he did not provide sufficient documentation that he attempted to address his debts while they were accumulating or after he obtained steady employment in 2009, which evidence is necessary for the full application of AG ¶ 20(b).

Applicant did not document participation in credit or other financial counseling. However, he submitted evidence that the two SOR-listed timeshare debts were previously resolved, one of which was cancelled in 2010, and the other which should never have been reported to a credit bureau. He has been making payments on one delinquent credit card since May 2014, and recently began monthly payments on the other delinquent credit card debt. He provided a budget that addresses current bills. He said he is saving about \$1,500 a month. The evidence establishes clear indications that the two delinquent credit card debts are under control. AG ¶ 20(c) applies. His efforts to pay or resolve the credit card debts alleged in SOR ¶¶ 1.b and 1.c, demonstrate a good-faith effort to resolve financial obligations. AG ¶ 20(d) applies to those debts.

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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a 68-year-old man, who honorably served in the Air Force for 23 years, and continued serving the

military through his work with defense contractors. He has held a security clearance during those 40 years. His employer and colleagues are aware of his financial problems and recommend that his request for a security clearance be granted. He has a budget to manage income and expenses. He is aware of the negative effects that future unaddressed financial obligations could have on his employment. At this time, he is making monthly payments on two delinquent debts, whose balances total about \$11,000. There is sufficient evidence to believe he will continue to honor the repayment agreements and pay any other obligations.

Overall, the record evidence leaves me without doubts or concerns as to Applicant's present eligibility and suitability for a security clearance. He met his burden to mitigate the security concerns arising from financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge