



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 12-07128
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

02/26/2015

Decision

HOGAN, Erin C., Administrative Judge:

On July 14, 2014, the Department of Defense (DOD) issued a Statement of Reasons (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) effective within the Department of Defense after September 1, 2006.

On July 23, 2014, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 2, 2014. The case was assigned to me on that same date. On December 8, 2014, a Notice of Hearing was issued, scheduling the hearing for January 29, 2015. The hearing was held as scheduled. During the hearing, the Government offered 11 exhibits which were admitted as Government Exhibits (Gov) 1 – 11. Applicant testified and offered nine exhibits which were admitted as Applicant Exhibits (AE) A – I. The transcript (Tr.) was received on February 6, 2015. The record was held open until February 12, 2015, to allow Applicant to submit additional documents. He timely submitted three documents which were admitted as AE J, AE K, and AE L. Department Counsel did not object to

the admission of the documents. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural Matters

The Government moved to amend the SOR pursuant to paragraph E3.1.17 of the Directive. SOR ¶ 1.u was added to the SOR with no objections from Applicant, as follows:

1.u. You filed for Chapter 7 bankruptcy in December 2014. (Tr. 18-19; Gov 8 – 11)

Findings of Fact

In his response to the SOR, Applicant admits SOR allegations 1.a, 1.b, 1.d – 1.n, 1.p, 1.r – 1.t. He admitted to SOR allegation 1.u at the beginning of the hearing. He denies SOR allegations 1.c, 1.o, and 1.q.

Applicant is a 52-year-old employee of a Department of Defense contractor seeking to obtain a security clearance. He has worked for his current employer since February 2014. He served on active duty in the United States Air Force from 1983 to 1986. He earned a bachelor's degree in 1999, and a master's degree in 2000. He is divorced and has three daughters ages 24, 19 and 14. His oldest daughter resides with him. She attends college. He has raised her since she was nine months old. His two other daughters live with their mothers. (Tr. at 14, 31, 47-48, 51-56, 101; Gov 1)

Applicant's security clearance background investigation revealed that he has a history of financial problems to include a Chapter 7 bankruptcy discharge filed in November 2003. (SOR ¶ 1.a: Gov 3 at 4) Applicant admits that his November 2003 bankruptcy was due to financial irresponsibility. He was not taught how to properly manage his finances. (Tr. at 13, 49-50)

Recent credit reports revealed he has 19 delinquent debts. The debts include a \$4,858 judgment filed against him in February 2012 on behalf of his homeowner's association. (SOR ¶ 1.b: Gov 6 at 1); a \$1,282 cell phone account that was placed for collection in August 2012 (SOR ¶ 1.c: Gov 6 at 1); a \$194 medical account (SOR ¶ 1.d: Gov 3 at 9; Gov 6 at 1); four delinquent medical accounts in the amounts of \$669, \$454, \$88, and \$150 (SOR ¶¶ 1.e – 1.h: Gov 6 at 1); a delinquent child support account in the amount of \$11,379 (SOR ¶¶ 1.i: Gov 2 at 1; Gov 6 at 2); and a delinquent child support account in the amount of \$5,013. (SOR ¶ 1.j: Gov 2 at 1; Gov 6 at 2)

Additional delinquent debts include: a mortgage account that was past due in the approximate amount of \$92,047 (SOR ¶ 1.k: Gov 6 at 2); a \$1,565 collection account (SOR ¶ 1.l: Gov 3 at 9; Gov 6 at 2); a \$16,587 automobile loan judgment entered against Applicant (SOR ¶ 1.m: Gov 3 at 11; Gov 6 at 3); a \$15,415 credit card judgment entered against Applicant on May 2013 (SOR ¶ 1.n: Gov 3 at 11; Gov 5; Gov 6 at 3); a

\$1,026 phone account placed for collection (SOR ¶ 1.o: Gov 3 at 5; Gov 6 at 1); and four delinquent medical accounts in the amounts of \$78, \$76, \$150, \$240, and \$233. (SOR ¶¶ 1.p - 1.t: Gov 3 at 10, 12, 15)

From 2002 to 2011, Applicant had a steady well-paying job. His current financial problems began when he was laid off in 2011. Although he had several jobs between 2011 and February 2014, they paid just enough to pay his bills and not pay his debts. He was underemployed for a number of years. In 2013, he suffered an on-the-job injury while moving furniture. The medical bills alleged in SOR ¶¶ 1.d – 1.h were related to his injury. It is highly likely that these bills will be paid by worker's compensation. Applicant's claim for temporary total disability from January 7, 2014, to February 10, 2014, was approved on July 22, 2014. The medical bills will be paid once the parties agree to a settlement. (Tr. at 36-39, 48-49, 58-69, 86; AE F)

During the years he was underemployed, he fell behind on his child support obligations. Although he is still paying child support arrears for his two younger daughters, he is current on his child support payments. Approximately \$889 is deducted each pay period for his child support payments. (Tr. at 34, 43-44; AE D)

Applicant lives with his mother and brother. He and his mother jointly own the house. They fell behind in their mortgage payments, but they recently underwent a mortgage modification which was approved on September 23, 2014. Their new mortgage payment is \$1,871.06. The household expenses are split three ways. Applicant reaffirmed the mortgage debt and his automobile loan in the bankruptcy. (Tr. at 28, 34, 43-44, 72-73, 192; Gov 10; AE D; AE J; AE L)

In February 2014, Appellant was hired by his current company. He is now earning a sufficient income. He attempted to enter into payment agreements with his creditors, but decided to file for bankruptcy out of concern that he would still be considered a security risk. (Tr. at 69, 79-82)

On December 19, 2014, Applicant filed for bankruptcy under Chapter 7. He listed total assets of \$268,985 and total liabilities of \$571,683. The meeting of the creditors took place the day before his hearing, January 28, 2015. No one entered an objection to the bankruptcy. Applicant anticipates the bankruptcy will be final in March 2015. On January 30, 2015, he completed the first of two financial courses he is required to take by the bankruptcy court. The first course was an on-line course. He will complete the second course by March 15, 2015. (Tr. at 44, 69, 98-99, 103; Gov 8 – Gov 11; AE K)

Most of Applicant's debts are included in the bankruptcy, with the exception of several of the medical accounts which will be paid as a result of Applicant's worker's compensation claim. (Tr. at 38-39, 67-69)

Applicant has a total balance of \$167,589 in student loans which are currently in deferment. While listed in the bankruptcy, student loans are not usually dischargeable in bankruptcy. The bankruptcy also lists two tax debts. A \$4,327 tax debt owed to the

state of Maryland and a \$2,332 tax debt owed to the Internal Revenue Service, both for tax year 2011. Applicant testified that in 2011, the house needed repairs so he withdrew funds from a 401k which resulted in a tax penalty. Applicant is prepared to pay the debts that are not discharged in his Chapter 7 bankruptcy. (Tr. at 44, 102; Gov 9 at 15-17)

Applicant testified that he is more mature now than in his previous bankruptcy. He looks at life differently and is responsible. (Tr. at 99-100)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when determining 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 as to 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 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.

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.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts); and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant initially encountered difficulties meeting his financial obligations beginning in 2003 when he filed for bankruptcy. He had a secure well-paying job until he was laid off in 2011. He was underemployed for a number of years and encountered financial problems again.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving 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 pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of 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.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden

of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions apply:

AG ¶ 20(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) applies because Applicant's current financial problems began after he was laid off from a well-paying job in 2011. He was under-employed for a number of years until he found a suitable job in February 2014. Once he was hired, he attempted to pay off all of the debts himself before filing for bankruptcy. He ensured that his child support payments were being paid. He also modified the mortgage on the house he owns with his mother. He acted responsibly under the circumstances.

AG ¶ 20(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) applies because Applicant is in the midst of the bankruptcy process. His debts will be discharged next month. He understands the importance of being financially responsible and has attended the first of two required counseling courses mandated by the bankruptcy court. Based on his hearing testimony, his efforts to keep his child support payments current, and the reaffirming of his automobile loan and mortgage in the current bankruptcy, Applicant appears to understand his financial situation. His financial situation will soon be under control. Applicant mitigated the financial considerations concerns.

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 the 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's past active duty service in the United States Air Force and his employment history. He had a well-paying job from 2002 to 2011. Upon being laid off, finding suitable employment proved to be difficult resulting in several years of under-employment. In February 2014, he found a well-paying job. After attempts to resolve his delinquent accounts, Applicant concluded he had no alternative other than to file for bankruptcy. He is current on his child support payments and he recently modified his mortgage. He appears to be living within his means. I am confident he will resolve any debts that are not discharged in the bankruptcy. Security concerns are mitigated.

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.u:	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.

ERIN C. HOGAN
Administrative Judge