



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



In the matter of:)	
)	
)	ISCR Case No. 12-08055
)	
)	
Applicant for Security Clearance)	

Appearances

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

05/11/2015

Decision

DAM, Shari, Administrative Judge:

Applicant provided proof that he resolved six of the eight alleged delinquent debts. He is resolving the remaining two delinquent debts, which have a combined balance of about \$11,400, through monthly payments. 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

In December 2010, Applicant submitted a security clearance application (SCA). On December 12, 2014, Department of Defense (DoD) issued Applicant a Statement of Reasons (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 December 29, 2014, Applicant answered the SOR (Answer), and requested a hearing. On February 24, 2015, the Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On March 10, 2015, DOHA issued a hearing notice, setting the case for April 1, 2015. The hearing was held as scheduled. At the hearing, Department Counsel offered five exhibits (GE), and Applicant offered 12 exhibits (AE) into evidence. (GE 1-5; AE A-L.) All were admitted. DOHA received the hearing transcript (Tr.) on April 9, 2015. The record remained open until April 20, 2015, to give Applicant an opportunity to submit additional information. Applicant timely submitted a document that I marked as AE M and admitted into the record without objection from Department Counsel.

Findings of Fact

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

Applicant is 64 years old. He and his wife have been married for more than 42 years. They have two adult children. In 1971 he enlisted in the Air Force and served until 1973. He then enlisted in the Air National Guard, and served until 1976. In 1982 he re-enlisted in the Air National Guard and served until 2000, when he transferred to the Air Force Reserve. He received an honorable discharge in 2009, at the rank of senior master sergeant. He received numerous awards and medals. He maintained a security clearance throughout his military service. In 2010 he began working for a U.S. defense contractor in the Middle East. (Tr. 21-22, 54; GE 1; AE M.)

In 2005 Applicant and his wife started a real estate company. They developed and sold residential lots. In 2007 and 2008 the economic downturn adversely affected their ability to finance or sell properties. By about 2009 or 2010 they had lost their properties to either the bank or previous owners. (Tr. 26.) Their financial situation deteriorated over those three to four years, which caused them to accumulate delinquent debts.

Based on credit bureau reports (CBR), dated November 2014 and May 2012, the SOR alleged eight delinquent debts that totaled \$52,975 and became delinquent between 2008 and 2013. (GE 3, GE 4.) The status of each debt is as follows:

SOR ¶ 1.a: The \$308 debt was owed to a utility company. Applicant paid the debt in January 2014. (AE B.)

SOR ¶ 1.b: The \$17,042 debt was owed to a credit card company. In December 2014 the company issued a 1099-C, cancelling the debt. Applicant sent that form to his accountant to file with his 2014 income tax returns. (Tr. 30; AE C.)

SOR ¶ 1.c: The \$9,948 debt is owed to a credit card company and is being resolved through monthly payments of \$100. The balance had risen to \$12,848 when he started making payments. (Tr. 32; AE D.)

SOR ¶ 1.d: The \$5,435 debt was owed to a credit card company. In September 2012 the company issued Applicant a 1099-C, cancelling the debt. He sent that form to his accountant to file with his 2012 income tax returns. (Tr. 33-34, 37; AE E.)

SOR ¶ 1.e: The \$2,727 debt was owed to a credit card company. In September 2012 the company issued Applicant a 1099-C, cancelling the debt. He sent that form to his accountant to file with his 2012 income tax returns. (Tr. 33-34, 37; AE F.)

SOR ¶ 1.f: The \$2,400 debt is owed to a credit card company and is being resolved through monthly payments of \$100. The balance had risen to \$5,470 when he started making payments. The balance is \$1,975. (Tr. 38; AE G.)

SOR ¶ 1.g:¹ The \$2,000 debt was owed to a credit card company. It was paid in August 2014. (Tr. 39; AE H.)

SOR ¶ 1.i: The \$13,118 state tax lien for tax years 2011 and 2012 was paid and resolved in September 2014. (Tr. 40; AE I.)

Applicant resolved six of the eight SOR-alleged debts, and is resolving the remaining two, which currently total about \$11,400. As of May 2014, he and his wife have net monthly income of \$5,728 and expenses of \$2,319. They recently refinanced their home to help with monthly cash flow. All of their financial obligations are current. (Tr. 44-47.) They do not use credit cards. Applicant said he intends to make payments on the two outstanding debts until they are paid. (Tr. 48.) If he obtains another position with a defense contractor, he will eliminate all debt within a year. (Tr. 49.)

In his concluding remarks Applicant stated, "The Department of Defense put their trust in me back in 1971 and for 33 years I did not let them down. I assure you they can keep their trust in me in 2015." (Tr. 54-55.)

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.

¹ There is no SOR ¶ 1.h allegation.

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 2009 and 2013, Applicant accumulated debts that he was unable or unwilling to resolve until 2014 and later. The evidence is sufficient to raise both 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 evidence that his financial problems began arising when the economy spiraled downward in 2008. Those were circumstances beyond his control. However, he did not provide sufficient documentation that he attempted to address debts while they were accumulating, 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 he resolved six debts and is resolving the remaining two. He provided a budget that addresses all financial obligations within his means. The evidence establishes clear indications that his finances and debts are under control. AG ¶ 20(c) applies. His efforts to pay or resolve all debts alleged in the SOR also demonstrate a good-faith effort to resolve financial obligations. AG ¶ 20(d) applies to all 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 credible 64-year-old man who honorably served in the military for over 20 years, during which time he held a security clearance. Since encountering financial problems, he has responsibly taken steps to manage them. He has a budget that easily accommodates expenses, including two debts that he is paying. He is aware of the negative effects that future unaddressed financial obligations could have on his employment. There is sufficient evidence to believe he will continue to honor his 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

Subparagraphs 1.a through 1.i: 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.

SHARI DAM
Administrative Judge