



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



In the matter of:)	
)	
)	ISCR Case No. 12-08193
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

01/15/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 17, 2013, 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 (EO) 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 (AG) implemented by the DOD on September 1, 2006.

Applicant submitted a notarized response to the SOR on October 14, 2013, and requested a hearing before an administrative judge. The case was assigned to me on December 3, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 11, 2013, scheduling the hearing for January 7, 2014. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 3 were

admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through E, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that were marked AE F through I and admitted without objection. Department Counsel's e-mail regarding the submission is marked Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on January 14, 2014.

Findings of Fact

Applicant is a 45-year-old employee of a defense contractor. He served in the U.S. military for 23 years before retiring in 2009 as an O-4. He held a security clearance in the military, but it lapsed after he retired. He has a bachelor's degree. He married in 1994 and divorced in 2010. He married his current wife in 2011. He has two children, ages 18 and 14, and he has an adult stepchild.¹

Applicant was unemployed for about four months after he retired from the military. His unemployment, in conjunction with his divorce, placed a financial strain on him, and a number of debts became delinquent. Applicant has worked overseas for the last few years, and he has made efforts to resolve his financial problems. He paid or settled several delinquent debts before the SOR was issued.² Two remaining delinquent debts became the focus of the SOR.³

Applicant paid the \$1,399 debt to a brokerage firm in October 2013 (SOR ¶ 1.b). He paid \$3,100 to the collection company handling the \$10,639 department store debt on January 2, 2014 (SOR ¶ 1.a). Applicant and the collection company agreed to settle the remaining balance of \$8,574 for \$3,952. Applicant paid \$1,000 on January 9, 2014. The remainder of the settlement amount is to be paid in 12 monthly installments of \$246.⁴

Applicant credibly testified that he will continue with his settlement payments. He is committed to becoming completely debt free. He earns a good living. With his salary and military retirement pay, he is able to pay all his debts. He also has an excess that can be used for savings, investments, retirement accounts, and emergencies. He has not received financial counseling.⁵

¹ Tr. at 20-24, 35-38, 42; GE 1, 2.

² Tr. at 20-25, 38-40; Applicant's response to SOR; GE 1-3; AE B.

³ The SOR alleged three delinquent debts, but two of the debts are duplicates. The department store credit card debt alleged in SOR ¶ 1.c was transferred to the collection company alleged in SOR ¶ 1.a.

⁴ Tr. at 25-32; Applicant's response to SOR; GE 1; AE A-D, F-I.

⁵ Tr. at 33-38, 41; AE B, E.

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 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, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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 conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

The debt alleged in SOR ¶ 1.c is a duplicate of the debt alleged in SOR ¶ 1.a. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). SOR ¶ 1.c is concluded for Applicant.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. 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's finances were adversely affected by his divorce and a period of unemployment. Those events were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has been working to resolve his financial problems for a few years. He paid several debts that were not alleged in the SOR. Of the two remaining debts, he paid one debt, and he paid \$4,100 toward the settlement of the second debt.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that Applicant acted responsibly under the circumstances and made a good-faith effort to pay his debts. There are clear indications that his financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b), 20(c), and 20(d) are applicable. AG ¶¶ 20(a) is not completely applicable because Applicant is still in the process of paying the settlement owed on the last debt.

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.

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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's honorable military service, the factors that led to his financial problems, and the steps he has taken to remedy those problems. As indicated above, an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. I find that Applicant has established a plan to resolve his financial problems, and he has taken significant action to implement that plan.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated financial considerations security concerns.

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.c: 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.

Edward W. Loughran
Administrative Judge