



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



In the matter of:)
)
) ISCR Case No. 12-08546
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

07/17/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On September 12, 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 (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 responded to the SOR on October 7, 2014, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on March 31, 2015. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on May 20, 2015. He responded with documents that I have marked Applicant's Exhibit (AE) 1 and 1(A) through 1(J). The case was assigned to me on June 23, 2015. The Government exhibits included in the FORM and AE 1 through 1(J) are admitted without objection.

Findings of Fact

Applicant is a 53-year-old employee of a defense contractor. He has worked for his current employer since 2006. He served in the U.S. military from 1979 until he retired in 1999. He seeks to retain his security clearance. He is a high school graduate with some technical school training. He has been married for more than 27 years. He has two adult children and a teenage child.¹

Applicant's wife was born in a foreign country. She became sick in 2006. She was eventually diagnosed with cancer. She was unable to work. She required stem cell transplants from her brother and mother. Applicant paid for his brother-in-law to travel from another part of the United States and for his mother-in-law to travel from the country where she lived. Applicant had to quit his part-time job to care for his wife. Applicant became sick in 2007. He was hospitalized and required surgery. He was on disability for three months. As Applicant struggled to pay his bills, the interest rates and penalties on his credit cards increased, which exacerbated his problem.²

Applicant contracted with a debt-settlement company in August 2009 to assist him in resolving his debts. He enrolled 17 debts, totaling \$114,624, in the company's debt-resolution program (DRP). The debt-settlement company charged him 10% of his debt, or \$11,462. The estimated duration of the DRP was 50 months. Applicant agreed to make 5 monthly payments of \$917 to the debt-settlement company for their fees, followed by 45 monthly payments of \$1,195. For months 6 through 17 of the DRP, \$573 went each month to the debt-settlement company for their fees, and \$621 went each month to an escrow account. For months 18 through 50, the entire \$1,195 was to go to the escrow account. The debt-settlement company agreed to negotiate settlements with his creditors and use the accumulated funds in the escrow account to pay the settlements.³

Applicant retained a law firm in October 2011 to verify the accuracy of his accounts and dispute any inaccurate accounts. The debt-settlement company did not settle Applicant's debts until they were verified by the law firm. Applicant settled 10 debts through his debt-settlement company. Several of the debts in the DRP could not be verified by the law firm and were not settled.⁴

¹ Items 2, 3.

² Items 1-3.

³ Items 1-3.

⁴ Items 1-3.

The SOR alleges six delinquent debts with balances totaling about \$58,576. The Government submitted credit reports from April 2014 and March 2015. None of the six debts are listed with a balance on either report. All of the debts alleged in the SOR were transferred from their original creditors. The credit reports list the collection company account for the transferred debt alleged in SOR ¶ 1.f as paid. The credit reports also established that the \$17,346 debt alleged in SOR ¶ 1.c is Applicant's wife's debt. He was only an authorized user of the account. Four of the debts, totaling \$51,936 (SOR ¶¶ 1.a through 1.d), are to the same bank. Applicant's DRP included all the debts in the SOR. Four of the six debts alleged in the SOR have been settled and paid; one debt has been settled and is in the process of being paid; and the last debt is in Applicant's current DRP to be addressed. Individual debts will be discussed below in the order they were settled.⁵

SOR ¶ 1.e alleges a \$3,320 charged-off credit card account. The collection company handling the debt listed a \$4,105 balance in July 2010. Applicant settled the debt for \$2,052 through an initial \$500 payment, followed by six monthly payments of \$258. He completed the settlement payments in January 2011. Applicant submitted proof that the debt was resolved when he responded to DOHA interrogatories in June 2014.⁶

The \$17,346 debt alleged in SOR ¶ 1.c is Applicant's wife's debt. The debt was settled in 2011 for \$6,938 through the DRP. The settlement was paid through a \$100 payment and six monthly payments of \$1,367. Applicant submitted proof that the debt was resolved when he responded to DOHA interrogatories in June 2014.⁷

SOR ¶ 1.f alleges a \$3,320 charged-off credit card account. The collection company handling the debt listed a \$7,372 balance in March 2012. Applicant settled the debt for \$2,948 through five monthly payments of \$525 and a final payment in August 2012 of \$323. Applicant documented this information in his response to DOHA interrogatories. The Government credit reports also note the collection company account as paid with a zero balance.⁸

Applicant's original debt-settlement company went out of business before he completed the DRP. He contracted with a different debt-settlement company in October 2014. He enrolled five debts totaling \$58,361 in the company's DRP. The DRP included the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.d. Applicant agreed to pay the debt-settlement company 21% of the balance of each debt when the debt is settled. Applicant agreed to pay \$863 each month to the debt-settlement company.⁹

⁵ Items 1-5.

⁶ Items 1-5; AE 1, 1(C).

⁷ Items 1-5; AE 1, 1(B).

⁸ Items 1-5; AE 1, 1(A).

⁹ Items 1, 3; AE 1.

Applicant settled the \$8,778 debt alleged in SOR ¶ 1.d for \$2,828. The settlement amount was paid in February 2015 through a collection agent.¹⁰

SOR ¶ 1.d alleges a \$20,171 charged-off credit card account. The original credit card company was acquired by the bank listed in the SOR. The debt was settled in May 2015 for 13 monthly payments of \$873. Applicant established that he made the first required payment in May 2015.¹¹

In summary, of the six debts alleged in the SOR, only five are Applicant's responsibility. He provided documented proof in his response to interrogatories that he settled three of the debts between 2010 and 2012, including the account on which he was only an authorized user. He settled and paid a fourth debt in February 2015, and he is in the midst of the settlement payments for the fifth debt. The \$5,641 debt alleged in SOR ¶ 1.a is included in Applicant's DRP, but it has not yet been settled.¹²

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.

¹⁰ Items 1-5; AE 1, 1(D).

¹¹ Items 1-5; AE 1, 1(E).

¹² Items 1-5; AE 1.

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. The following are potentially applicable in this case:

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

Applicant had delinquent debts that he was unable to pay. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the 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 wife developed cancer in 2006. Her treatment spanned several years, and she was unable to work. Applicant paid for his brother-in-law to travel from another part of the United States and for his mother-in-law to travel from another country for stem cell transplants. Applicant had to quit his part-time job to care for his wife. He became sick in 2007 and missed several months of work. Those events were beyond his control.

Applicant contracted with a debt-settlement company in August 2009. He settled ten debts, including three of the six debts that were alleged in the SOR. That company went out of business, but he contracted with another company. He settled and paid a fourth debt, and he is making settlement payments on the fifth debt. The sixth debt is included in his DRP to be settled.

I find that Applicant's financial problems were caused by conditions that were beyond his control. He acted responsibly 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 yet completely applicable because Applicant is still in the process of resolving his last two 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.

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 this whole-person analysis.

I considered Applicant's honorable military service, his stable work history, the factors that led to his financial problems, and the steps he has taken to remedy those problems. I am convinced his finances are sufficiently stable to warrant a security clearance.

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

Edward W. Loughran
Administrative Judge