



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-09772
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

10/09/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial security concerns.

Statement of the Case

On May 23, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), dated January 20, 2015, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order 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) effective in the DOD on September 1, 2006.

Applicant answered the SOR on February 20, 2015, admitting all eight allegations. Department Counsel was prepared to proceed on May 27, 2015, and the case was assigned to me on June 8, 2015. DOD issued a notice of hearing on July 1, 2015, scheduling a hearing for July 28, 2015. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 5. Applicant testified, and did not submit any documents at the hearing. I left the record open for Applicant to submit documents. Applicant timely submitted seven exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through G. (GX 6, e-mail, dated August 28, 2015). I received the transcript of the hearing (Tr.) on August 5, 2015. The record closed on August 28, 2015.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is 50 years old and has been employed by a defense contractor as a computer systems operations manager since August 2008. Applicant served on active duty in the Navy from September 1984 until February 2002 when he was medically retired with an honorable discharge as a first class petty officer (E-6). After being retired, he immediately was employed and worked for various government contractors. He has been married for over 27 years and has two grown children. His wife became employed about two months ago, and they now have a combined monthly income of approximately \$8,000. Their monthly expenses are about \$5,000, leaving \$3,000 monthly in discretionary funds. Prior to his wife's employment, their monthly discretionary funds were about \$200. (Tr. 13-15, 32-33; GX 1, e-QIP, dated May 23, 2012)

The SOR alleges, Applicant admits, and credit reports (GX 2, dated October 17, 2014; and GX 3, dated June 2, 2012) confirm the following debts for Applicant: student loans in collection for \$31,977 (SOR 1.a), \$27,508 (SOR 1.b), \$10,781 (SOR 1.c), \$10,633 (SOR 1.d), \$6,757 (SOR 1.e), and \$717 (SOR 1.g); a medical account in collection for \$1,720 (SOR 1.f); and a repossessed car loan for \$4,499 (SOR 1.h). The total amount of the alleged delinquent debt is approximately \$99,091. Over 90% of the debt is student loan debt.

Applicant attended college from 2003 until 2009 when he received a bachelor's degree in Science and Information Systems Security. He used student loans to pay for his schooling and some living expenses. His wife was at home caring for their two children who had medical issues requiring her care rather than being employed. She also had some medical problems preventing full employment. She attended school for most of the time that Applicant was in school using student loans to pay her tuition. She had difficulty finding employment from 2009 until she started work at a full-time position in early May 2015 when she completed her medical education. His wife needed schooling in her medical field to get a good job. The family tried to live within their

means but it was difficult on only one salary. Their car was repossessed causing the debt at SOR 1.f. Their house went into foreclosure, but there was enough equity in the house so that there was no debt after the foreclosure. His wife's student loans are all in her name, and Applicant is not responsible for those loans. (Tr. 26-37)

Applicant made some payments on his student loans in 2009 when he completed school. He and his wife moved after he completed school, and they filed change of address notices with the post office. The administrators of the various student loan programs did not receive notice of his new address. Therefore, Applicant did not continue to receive information on his loans and the requirement to make payments on the student loans. When he was finally notified that the loans were no longer deferred, he started to make the payments.

Applicant believes that the total amount of student loan that he incurred is approximately \$100,000. The student loans were consolidated into two loans, and Applicant has payment plans for both loans. The loans at SOR 1.a and 1.b are consolidated under the Department of Education. Applicant has been making payments of \$410 per month on this loan since September 2014. The loans at SOR 1.c, 1.d, 1.e, and 1.g are consolidated and are being serviced by a student loan collection agency. He has been paying \$124 monthly on the consolidated loan since May 2015. (Tr. 17-21, 37-42; AX A, Letter, dated August 21, 2015; AX C, Payment schedule, dated August 2015; AX D, AX E, AX F, Receipts, dated August and September 2015)

Applicant does not know the origin of the medical debt at SOR 1.f. The credit reports do not provide him with sufficient information to identify the debt. He has been making \$100 monthly payments on all of his known medical debts. He also makes \$100 monthly payments on his repossessed car loan debt. (Tr. 41-43; AX B, Receipt, dated July 28, 2015; AX G, Receipt, dated August 21, 2015).

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 must be considered 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 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 in seeking 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 that the applicant may deliberately or inadvertently fail to 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

Financial Considerations

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. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or 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 repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is at risk of acting inconsistently with holding 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.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant had financial difficulties from student loans starting in 2009. The family had only one income since his wife could not find good-paying employment and she had to stay at home to care for their two children with medical issues. Applicant's history of delinquent debts is documented in his credit report, his OPM interview, and his testimony at the hearing. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy debt.

I considered the following Financial Considerations Mitigating Conditions under AG ¶ 20:

- (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 problems 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 has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

These mitigating conditions apply. Applicant incurred delinquent debt after completing his education using student loans, and his income was the only income in the family. The family could not pay all of their delinquent debts on a single income. In addition, the family moved and was not timely notified that his student loans were no longer deferred. He could not afford to pay his debts on only one family income and he had a car repossessed and a house foreclosed. He did not incur a debt from the foreclosure. While the conditions that led to his delinquent debt were not totally beyond his control since he willingly used student loans to further his education, it is unlikely he will incur additional student loans, and he acted responsibly towards his debts by making payment plans for his student loans and other debts. While Applicant did not present evidence of financial counseling, he is resolving his debts and they are under control.

Applicant established his good-faith initiative to pay his debts. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a

good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan. Applicant has established a meaningful track record of debt payment. His student loans have been consolidated into two loans and he is making monthly payments on each of the loans. He has a plan to pay all of his known medical debts and he is current with that plan. He has a payment plan for the repossessed car loan and is current with that plan. By being current with payment plans for his delinquent debts, Applicant has shown that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his finances.

Applicant has shown that he is managing his personal financial obligations reasonably and responsibly, and his financial problems are behind him. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information, I conclude that Applicant has mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 18-year career in the Navy ending in an honorable discharge. Applicant has payment plans for all of his delinquent debts and he is current with the required payments. He has a plan

to continue to resolve his remaining debt. This information shows Applicant's responsible management of his finances. Applicant presented sufficient information to establish that he acted reasonably and responsibly towards his finances, and that he will continue to responsibly manage his financial obligations. Overall, the record evidence leaves me without questions or doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is granted.

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.g 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.

THOMAS M. CREAN
Administrative Judge