



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-10214
)
Applicant for Security Clearance)

Appearances

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

03/20/2014

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 security concerns for financial considerations.

Statement of the Case

On June 18, 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 interrogatories to clarify information in his background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOD could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated January 3, 2014, 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 in an undated response. He admitted eight of the nine allegations under Guideline F. He denied SOR allegation 1.i, alleging that he had no information on the debt. Department Counsel was prepared to proceed on January 28, 2014, and the case was assigned to me on January 25, 2014. DOD issued a Notice of Hearing on February 10, 2014, scheduling a hearing for February 26, 2014. I convened the hearing as scheduled. The Government offered four exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant testified. I left the record open for Applicant to submit documents. Applicant timely submitted four documents that I marked and admitted into the record without objection as App. Ex. A through D. I received the transcript of the hearing (Tr.) on March 6, 2014.

Findings of Fact

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

Applicant is a 32-year-old 2004 college graduate with a bachelor's degree. He has been employed by a defense contractor consistently since February 2009 as a program analyst. Prior to that, he worked for a real estate company from August 2005 until November 2008. He was laid off because of the real estate downturn and received a two-month severance package. He was unemployed until he started with his presented employer in February 2009. He drew unemployment compensation while unemployed. He is not married. His personal financial statement shows a net monthly income of \$4,156, with net monthly expenses of \$3,805, leaving a monthly remainder for discretionary spending of approximately \$351. Applicant recently signed up for a credit monitoring service from his credit card company. (Tr. 48-54; Gov. Ex. 1, e-QIP, dated June 18, 2012; Gov. Ex. 2 Response to Interrogatories, date November 19, 2013 at 5) Applicant has normally received a yearly bonus of 5% to 10% of his salary from his company in March. The company has not paid a bonus in the last few years since they have lost defense contracts and are not making as much profit. However, his department has over-reached its goals so they will receive a bonus this year. (Tr. 31)

Credit reports (Gov. Ex. 3, dated November 5, 2013; and Gov. Ex. 4, dated June 26, 2012) show the following delinquent debts for Applicant: a state tax lien for \$1,586 (SOR 1.a); a student loan debt charged off for \$6,683 (SOR 1.b); another student loan debt charged off for \$2,973 (SOR 1.c); a bank debt charged off for \$1,436 (SOR 1.d); three medical accounts placed for collection for \$50 (SOR 1.e), \$260 (SOR 1.f), and \$119 (SOR 1.g); a cable and internet debt in collection for \$335 (SOR 1.h); and a traffic ticket in collection for \$300 (SOR 1.i). The delinquent debts alleged in the SOR are in excess of \$13,000.

Applicant testified that the state tax lien at SOR 1. a, has been paid in full by the Internal Revenue Service (IRS) applying his tax refunds to the debt. He wrote to the various credit reporting agencies to advise them that the debt has been paid. They have not removed the debt from his credit reports. He provided the notice from the state court system that the tax lien has been released. (Tr. 17-18, 47; App. Ex. B, Court Document, dated May 22, 2007)

Applicant had over \$80,000 in student loans when he graduated from college in 2004. The loans were mainly held by the government-sponsored student loan agencies and a bank specializing in student loans. Applicant contends he has been paying his student loans, but presented no information to establish that the payments are for the bank-sponsored student loans. Applicant admits he owes \$9,000 for the bank student loans. The delinquent debts at SOR 1.b and 1.c are debts to the student loan bank totaling \$9,656. I find that Applicant is paying the government-sponsored loans and not the bank-sponsored student loans.

After graduating from college, Applicant could only find a low-paying job. All of his student loans were placed in forbearance since he was not earning sufficient salary to permit payment on the loans. The forbearance ended after two years, and he was required to make monthly payments in excess of \$800 on the loans which he could not afford. He did manage to make timely payments on some of the student loan accounts. He did make some payments on the accounts listed in the SOR when he had excess funds permitting him to make the payments. In November 2008, he was laid off from his job because of the economic downturn in the real estate business. He could not make any additional payments and the accounts went to default. When he started working for his present employer in February 2009, it was only a temporary position, paying over \$10,000 less than he had been paid. He made some payments on the student loans, but he was unable to make payments on the two student loan bank accounts.

Applicant contacted the creditor to arrange a payment plan. The bank initially requested full payment of the \$9,000 amount due. When he explained he did not have that amount of money, they gave him an amended payment plan of a good-faith payment of \$3,500, and resumption of his regular payments. He did not have the \$3,500 to agree to this plan. Applicant again contacted the bank in January 2014. The bank offered to take a \$500 good-faith payment and Applicant would resume making regular payments. Applicant did not have the \$500 available, but he told the bank he would have the funds available in March 2014 when he received his anticipated bonus. The bank agreed to wait until March 2014 for the initial agreed monthly payment of \$300. Applicant has established a monthly debit from his account of \$300 on the 25th of each month. He provided confirmation of the approved debit through June 2014. Applicant's other student loan accounts are being paid and are current. These debts are not listed as delinquent on his credit report. (Tr. 18-22, 35-40; App. Ex. A, e-mail, dated March 18, 2014)

The bank debt of \$1,436 was the result of a money order given to Applicant by a friend that Applicant deposited in his account in 2011. He withdrew cash from his account to give to the friend. Before withdrawing the funds, Applicant asked a bank employee if the money order was good. The bank credited the money order to Applicant's bank account but later withdrew the credit when the money order was determined to be fraudulent. Applicant's account did not have sufficient funds to cover the fraudulent money order. He spoke to a bank representative and was informed that the money order was his responsibility since he deposited it in his account. In a recent conversation with a bank employee, Applicant offered to make restitution in March 2014 when he received his bonus. Applicant has not made restitution on this debt. (Tr. 22-26; 41)

The medical debts at SOR 1.e, 1.f, and 1.g in the total amount of \$429 were from his primary care physician for treatment in 2012 and 2013. Applicant made co-payments at the time he received treatment and thought the remainder of the bill was his health insurance company's responsibility. When he received bills from the physician, he would forward them to the insurance company. He kept getting notification about the past-due bills. He knew about the debts when he discussed them with a security investigator in July 2012, but he did not believe the debts were his responsibility. When the debts became a SOR security issue, he talked to the insurance company in January 2014 and was informed that the debts were his responsibility since he was responsible for 10% of the medical bills in addition to the co-pays. He recently talked to the collection agency and told them he would make payments when he received his bonus in March 2014. Applicant presented a bank withdrawal to establish that the three debts have been paid as of March 14, 2014. (Tr. 26-27, 41-45; App. Ex. A, e-Mail, dated March 18, 2014; App. Ex. C, Withdrawal, dated March 14, 2014)

The cable and internet account at SOR 1.h is for equipment not returned to the company when Applicant moved. Applicant's roommate allegedly returned the equipment when Applicant switched to another service provider in 2010. He later received notice that he owed for the equipment which the company stated had not been returned. Applicant does not have a receipt for the equipment returned in 2010. While Applicant disputes this debt, he agreed to settle the account by paying half of the amount due. He has not made any payment on the account. (Tr. 27-30, 46-47)

Applicant received the traffic ticket from a traffic camera resulting in the debt at SOR 1.i in 2012 or 2013. The original fine was for \$150, which Applicant was going to pay. However, he had car problems and had a bill for over \$900. He even had to get a loan to have the car repaired since he needed the car to go to work. The debt rose to \$300 when he could not pay the initial fine. He forgot about the account until he received the SOR. He told the agency that he would pay the debt in March 2014 when he received his bonus. Applicant presented a receipt for the payment of the debt on March 13, 2014. (Tr. 30-31, 48; App. Ex. D, Receipt, dated March 13, 2014)

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 self-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 and 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. Applicant experienced financial difficulty after graduating from college with significant

student loans that he was unable to pay since he could only find a low-paying job. He had his loans placed in forbearance but still could not make payment after the time limit for forbearance was finished. After he found good-paying employment, he was laid off and was unemployed for a few months. Applicant's delinquent debts established by credit reports raise 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 shows a history of both an inability and unwillingness to satisfy debt.

I considered the following Mitigating Conditions:

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);

AG ¶ 20(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);

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);

AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts); and

AG ¶ 20(e) (the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue).

Applicant graduated from college in 2004 with significant student loans. He could not find good-paying employment. When he did finally find good-paying employment, he was laid off because of the economy of the real estate business. He was unemployed for a few months. He finally found a good-paying position with a defense contractor in 2009. His failure to find good employment was a condition beyond his control caused by the economic downturn. Since he is has been employed in the defense industry, it is unlikely that his financial issues will recur. He did pay a tax lien through forfeiture of his tax refund. He contacted his other creditors to advise them of his financial circumstances and reached payment agreements with some of the creditors. He paid or is paying most of his delinquent debts. He is acting responsibly towards his finances. AG ¶¶ 20(a) and 20(b) apply.

Applicant did not present evidence of financial counseling. He did state that he signed up for credit monitoring with his credit card company. This type service is not financial counseling. AG ¶ 20(c) does not apply

For AG ¶ 20(d) to apply, 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, and honest 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 in the future 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. AG ¶ 20(d) applies.

Applicant presented evidence to show that he has taken significant action to resolve his delinquent debts. He paid five of the nine delinquent debts in the SOR and is paying two debts under an agreed payment plan. He has not started paying on two other debts but intends to start payment soon. Applicant has established a “meaningful track record” of debt payment since he paid or is paying seven of the nine debts. His payment of the debts and his plans to pay the remaining debts shows a reasonable, prudent, and honest adherence to his financial duty and obligation.

Applicant disputes the debt for cable and internet equipment. Applicant contends the equipment was returned to the company providing the service. Applicant did not personally return the equipment, but his roommate did. Applicant does not have a receipt for the returned equipment. Applicant does not have a legitimate basis or documentation to dispute the debt since he did not personally return the equipment and does not have a receipt for the equipment. AG ¶ 20(e) does not apply.

Applicant took action to resolve his debts only recently. The long period of inactivity to resolve the debts is understandable under the circumstances. Applicant was young and inexperienced with significant debt after graduating from college. He could not find a good paying job. He took a deliberate approach to resolve most of his debts. He waited until he received a bonus from his employer and used those funds to pay some debts and start a payment plan for his student loans, his largest debt. He took his time, but under the circumstances of youth and inexperience and lack of a good-paying job, the delay is understandable. The recent documented actions to resolve delinquent debt provided by Applicant are firm indications that he is managing his financial obligations reasonably and responsibly, and his responsible financial conduct is likely to continue. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information available to include the information provided by Applicant, 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. Applicant presented sufficient information to establish that he is acting reasonably and responsibly towards his finances. He has or is paying seven of the nine delinquent debts and has plans to start payment on the two remaining debts. His present financial track record establishes confidence in the responsible management of his financial obligations. This indicates he will be concerned and act responsibly in regard to classified information. Overall, the record evidence leaves me without questions and 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 guidelines. 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.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.

THOMAS M. CREAN
Administrative Judge