



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



In the matter of:)	
)	
)	ISCR Case No. 12-10432
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

03/15/2016

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 June 10, 2015, 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 June 29, 2015, and elected to have the case decided on the written record in lieu of a hearing. On August 17, 2015, he changed his request to a hearing before an administrative judge. The case was assigned to me on November 4, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 12, 2015, scheduling the hearing for December 7, 2015.

The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through L, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted an e-mail and attached documents that were marked AE M through O and admitted without objection. DOHA received the hearing transcript (Tr.) on December 18, 2015.

Findings of Fact

Applicant is a 52-year-old employee of a defense contractor. He has worked for his current employer since 2005. He seeks to retain his security clearance, which he has held for about ten years. He attended college for a period, but he has not earned a degree. He is married for the third time after his first two marriages ended in divorce in 1986 and 2002. He has four adult children.¹

The SOR alleges four delinquent debts, but the debts alleged in SOR ¶¶ 1.a and 1.b are duplicate accounts. The SOR also alleges, and Applicant admits, that he filed a Chapter 7 bankruptcy case in 1996, and his debts were discharged. He also admitted that he and his second wife did not handle their finances well.²

Applicant cosigned a car loan for his second ex-wife in about 2008. They had been divorced for more than five years, but she is the mother of three of his children, and he decided to assist her. He discovered several years later that she did not maintain the payments, and the car was repossessed. He admitted that he made a poor decision and that he became responsible for the loan when his ex-wife did not pay it. The debt is listed twice on the combined credit report of April 2012, as reported by Equifax (SOR ¶ 1.a) and TransUnion (SOR ¶ 1.b). The debt is also reported by Equifax in October 2014 and August 2015 under a collection company with a balance of \$24,021. Applicant questioned the amount of the balance. The debt is not listed on the December 2015 Experian credit report, likely because it is past the seven-year reporting period. He does not intend to address the debt further.³

SOR ¶ 1.c alleges a \$707 debt to a collection company on behalf of an animal hospital. Applicant stated that his second ex-wife obtained veterinary services for her pet in 2007. Applicant's name was on the account. He disputed the debt, and the collection company deleted the account from his credit report.⁴

Applicant's mortgage loan was past due while he attempted to obtain a loan modification (SOR ¶ 1.d). The mortgage loan has been current since he received the

¹ Tr. at 22, 26-27, 40; GE 1.

² Tr. at 21-22, 38; Applicant's response to SOR; AE N.

³ Tr. at 25-34, 41; Applicant's response to SOR; GE 2-4; AE H, N.

⁴ Tr. at 22-25, 36; Applicant's response to SOR; GE 2-4; AE F, H, N, O.

modification in May 2015, as reflected by bank records and the two most recent credit reports.⁵

Applicant's current finances are sound. There are no derogatory accounts with balances on his most recent credit report. He is able to pay his bills without accruing new delinquent debt. He has not received formal financial counseling.⁶

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.

⁵ Tr. at 19-21, 37; Applicant's response to SOR; GE 2-4; AE A-D, H-L, N.

⁶ Tr. at 34, 39-40; GE 2-4; AE L.

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 or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as 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;

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

(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 filed a Chapter 7 bankruptcy case in 1996 because he and his second wife did not handle their finances well. He made an additional mistake when he cosigned a car loan for his second wife years after they divorced. He found out several years later that she did not maintain the payments, and the car was repossessed. The debt is old and no longer reported by the credit bureaus. Applicant's finances are otherwise sound. He is current on his mortgage loan, and he successfully disputed the animal hospital debt. At some point, a poor financial decision no longer reflects questionable reliability, trustworthiness, and judgment. Applicant has reached that point. AG ¶¶ 20(a) and 20(c) are applicable. AG ¶ 20(d) is applicable to the mortgage loan. AG ¶ 20(e) is applicable to the successfully disputed animal hospital 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.

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.e: 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