



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 13-01003
)
Applicant for Security Clearance)

Appearances

For Government: Julie Mendez, Esq., Department Counsel
For Applicant: *Pro se*

03/25/2014

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 January 24, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated November 26, 2013, 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 January 10, 2014. He admitted seven and denied three (SOR allegations 1.h, 1.i, and 1.j) of the Guideline F allegations.

Department Counsel was prepared to proceed on February 12, 2014, and the case was assigned to me on February 20, 2014. DOD issued a Notice of Hearing on February 24, 2014, scheduling a hearing for March 11, 2014. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant and one witness testified. Applicant offered three exhibits that I marked and admitted into the record without objection as App. Ex. A through C. I received the transcript of the hearing (Tr.) on March 18, 2014.

Procedural Issues

At the hearing, Department Counsel withdrew the SOR allegations (1.h, 1.i, and 1.j) that Applicant has denied. I find for Applicant on these allegations. There are seven allegations remaining, SOR allegations 1.a to 1.g. (Tr. 11-12)

Findings of Fact

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

Applicant is 29 years old and graduated from high school in 2005. He married in 2012 and has an infant daughter. His wife is a school teacher. He has been a member of the Army National Guard since October 2008. He has held a security clearance since joining the National Guard. He and his wife both have net monthly incomes of approximately \$3,200. Applicant receives approximately \$200 each month from the National Guard, so the family has a total monthly income of approximately \$6,700. Their monthly expenses are approximately \$5,900, leaving approximately \$800 in discretionary monthly net remainder. (Tr. 28-29, 49-53)

Court documents (Gov. Ex. 2, dated April 18, 2008; and Gov. Ex. 3, dated February 15, 2008) and credit reports (Gov. Ex. 4, dated September 10, 2013; and Gov. Ex. 5, dated February 2, 2013) show the following delinquent debts for Applicant: a judgment for \$1,935 on an unpaid lease (SOR 1.a); a judgment on an unpaid lease for \$7,081 (SOR 1.b); a credit card debt in collection for \$524 (SOR 1.c); a credit card debt charged off for \$460 (SOR 1.d); a debt to an online university for \$751 (SOR 1.e); a debt on a repossessed automobile for \$8,576 (SOR 1.f), and a credit card 120 days past due for \$764 (SOR 1.g). The delinquent debt alleged in the SOR is in excess of \$20,000.

Applicant worked for a telephone company from 2006 until February 2009 when he left to attend Army basic training as a member of the Army National Guard. Since Applicant was leaving for the Army, he voluntarily terminated his employment with the telephone company. He finished basic and advanced Army training in September 2009. He was unemployed for a month before commencing work with a defense contractor in Iraq in October 2009. He was employed by the defense contractor in Iraq until December 2011 when the contract ended. His yearly salary while in Iraq was approximately \$160,000. He returned to the United States and was unemployed for approximately three months until starting work with another DOD contractor in February

2012. His yearly salary with the contractor was approximately \$70,000. He worked for this contractor for eight months until the contract ended and he was again unemployed for a few months. He commenced working for his present employer as a computer systems assistant in December 2012 at an annual salary of \$65,000. His annual salary is now \$67,500.

The judgments at SOR 1.a and 1.b are for apartment leases that Applicant terminated. Appellant occupied the apartments with roommates who shared the lease payments but the apartment leases were in Applicant's name. The judgment at SOR 1.b was for an apartment he occupied from mid-2007 until the end of 2007. The judgment at SOR 1.a is for an apartment he occupied from early to mid-2008 when he vacated the apartment. His roommates moved out of the apartments leaving Applicant to pay the leases on his own. He notified the landlord of his inability to pay the rent and they gave him a date to vacate the premises. For the apartment listed at SOR 1.a, the landlord had a security deposit which was used to offset the rent due. At the time, Applicant was approximately 22 years old. (Tr. 20-23, 34-36)

Applicant went to both apartments to check with the managers, and was told that they did not have any records of the debts since the debts were sold for collection. He has been attempting to contact the collection agencies since January 2014 when he received the judgment documents from Department Counsel. He used the information in the judgment documents to contact the collections agencies as holders of the debts. He called both and left messages but his calls were not returned. He has not received a return call from his voice mails. His last attempt was a week before the hearing. He would like to arrange a payment plan with the collection agency. (Tr. 36-38, 52-54)

The debt at SOR 1.c is for a credit card that became delinquent after Applicant returned from Iraq. He used the card to pay for purchases when he was unemployed and looking for a job. He paid expenses associated with the birth of his new child, and he also paid other debts before starting to pay this debt. He contacted the creditor and agreed to a payment plan of three payments of \$174.60 each. He made the three payments and the debt is paid in full. (Tr. 21-25; Response to SOR, Attachments; App. Ex. C, checks, dated, February 27, 2014)

The debt at SOR 1.d is for a credit card Applicant used for purchases after he returned from Iraq and was unemployed. After completing payment of the debt at SOR 1.c, Applicant started paying the debt at SOR 1.d. He has an agreed plan to pay \$100 monthly on the debt. The first two payments have been made, and he has two more payments to make under the plan. He is current with the payment plan. (Tr. 20-21, 24-25, 38-40; App. Ex. B, Bank Statement, dated February 24, 2014)

Applicant was taking an online course when he left for basic training in February 2009. He did not complete the course. He believed the tuition would be dropped since he was on active duty. The university charged Applicant for the semester tuition. Applicant has an agreed payment plan of three payments of \$125.13 to satisfy the debt commencing in March 2014 when he completes paying the debt at SOR 1.d (Tr. 24, 40-41; App. Ex. A, Payment Plan, dated February 24, 2014)

Applicant purchased a car in 2006. When he lost his job in 2007, he was unable to continue making payments on the car loan. He voluntarily returned the car to the dealer since he could not afford the remaining \$8,576. He was young at the time and did not understand money management, and he was financially in over his head. He was not notified of the sale of the car by the dealer or contacted by the manufacturer. When advised of the debt, he contacted the dealer who sold him the car about the debt. He was told that the debt was sold and they had no information on the new creditor. He contacted the car manufacturer and received the same information. He does not have contact information on the collection agency to establish a payment plan. (Tr. 25-26, 41-43, 54-55)

Applicant paid the credit card debt at SOR 1.g in full. He presented the payment information in his Response to the SOR. Applicant still has and uses the credit card. The card has a balance but it is being paid as agreed. (Tr. 26-28)

Applicant has paid other debts not listed to include credit card debts. He used the funds he earned in Iraq for the down payment on his house and to buy a vehicle. He is current with his mortgage, his car payment, and his taxes. He has over \$14,000 in his retirement account. (Tr. 38-39, 43-47)

Applicant's supervisor, a retired Navy master chief testified that he hired Applicant for his job because he appeared to be a "stand-up" guy who had military experience and would work hard. Applicant has worked for him for two years and has done a really good job. He has seen Applicant grow up and mature by getting married, having a child, and finding how to go forward. Applicant knows that as a young person he did not make good decisions and did not follow-up on issues. He has made a complete turnaround. The witness was with Applicant when he called to locate creditors. He confirmed that Applicant tried but was unable to learn contact information for various creditors. Applicant has been honest, trustworthy and reliable. His ethical standards are high. He would recommend that Applicant be granted eligibility for access to classified information. (Tr. 56-61)

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 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 when he was an inexperienced young person and after returning from serving in Iraq. Applicant’s delinquent debts established by

court documents and 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); and

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

Applicant was young and immature when he accumulated debt for two leases he had to break because his roommates moved out leaving him with the debts. He purchased a car he no longer could afford to pay after he was laid off. He joined the Army National Guard and worked for a defense contractor in Iraq making a good salary. When he returned from overseas, he was unemployed for a few months and used credit cards to make purchases. The debts from the broken leases happened under unusual circumstances and were largely beyond his control since his roommates left leaving him with the debts. For the remaining debts, there is limited information to establish that the circumstances leading to the debts were unusual and will not recur. These debts were not beyond his control since he voluntarily purchased a car he no longer could afford and used the credit cards to make purchases. However, he has acted reasonably in resolving his debts. He receives limited credit under AG ¶¶ 20(a) and 20(b).

Applicant did not present any information concerning 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 married, had a baby, matured, and is paying his debts. There are seven delinquent debts in the SOR. He tried to contact three of his creditors but was unable to get sufficient contact information to determine the new creditors on his debts. He paid two of the seven debts, and is paying a third debt. He has an agreed payment plan on the last debt that he will start paying in the next month. Applicant has established a “meaningful track record” of debt payment since he paid, is paying, or has an agreed plan to pay four of the seven debts. He has made reasonable and prudent attempts to contact the other three creditors to no avail. His attempt to contact creditors, payment of debts, and his plans to pay the remaining debts shows a reasonable, prudent, and honest adherence to his financial duty and obligation.

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. He took a deliberate approach to resolve his debts. The delay is understandable based on Applicant’s youth and inexperience. He was unsuccessful in attempting to contact some of his creditors. He started paying his debts in turn starting with the lowest amount. He will have paid all of his debts to known creditors in a few months. 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. I considered the laudatory comments of his supervisor who is a retired Navy master chief. He is an experienced leader of men who knows how to evaluate and managed personnel. He testified to Applicant trustworthiness, reliability, and good judgment. He also confirmed Applicant's attempts to contact creditors to no avail. He discussed Applicant's maturity in how he now manages and resolves his financial issues. Applicant presented sufficient information to establish that he is acting reasonably and responsibly towards his finances. 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.j: 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