



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 13-01050
)
Applicant for Security Clearance)

Appearances

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

02/28/2014

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Statement of the Case

On January 9, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), dated October 24, 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 December 19, 2013, admitting all but one (SOR 1.h) of the 14 allegations with explanation. Department Counsel was prepared to

proceed on January 13, 2014, and the case was assigned to me on January 15, 2014. DOD issued a Notice of Hearing on January 28, 2014, scheduling a hearing for February 18, 2014. I convened the hearing as scheduled. The Government offered three exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 3. Applicant and one witness testified. Applicant offered 53 exhibits that I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through AAA. I received the transcript of the hearing (Tr.) on February 26, 2014.

Findings of Fact

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

Applicant is 51 years old. He never married but has two children, ages 19 and 14. He had child support obligations for the two children, but he now only pays child support of \$600 monthly for the 14 year old. He is in arrears on his child support payments for both children. Applicant received a bachelor's degree in electrical engineering in 1988. He has not served in the military. He worked for defense contractors in specialized programs for over 23 years, and had access to classified information during these years. He has not been employed since his short-term disability ended in 2010, but he is being sponsored for a position as an electrical engineer requiring access to classified information by a defense contractor. (Tr. 53-60; Gov. Ex. 1, e-QIP, dated January 9, 2013; App. Ex. L, Resume, undated)

Credit reports and Applicant's admissions show 10 medical debts or judgments (SOR 1.a-1.c, 1.e, 1.g, and 1.j-1.n); a \$101 telephone debt (SOR 1.d); a \$130 insurance debt (SOR 1.f); and child support in arrears of \$18,584 placed for collection (SOR 1.i). The debts at SOR 1.a, 1.b, 1.j – 1.m are to the same medical creditor. He denies a rent dispute debt at SOR 1.h. The total delinquent debt alleged in the SOR is approximately \$21,000. The majority of the delinquent debt is the child support arrears. In his response to the SOR, Applicant provided proof of payment of the debt at SOR 1.b. He also provided documentation to establish that the judgment at SOR 1.h was dismissed because the plaintiff creditor owed Applicant more than the amount of the judgment. (Tr. 12, 17-19, 52-53; App. Ex. Y, Response to SOR, Reasons for Financial Debts, dated October 20, 2013; App. Ex. H, Judgment Dismissal, dated December 16, 2009)

Applicant was involved in three separate automobile accidents resulting in severe injuries leaving him temporarily paralyzed and unable to work. The first accident was on April 7, 2000, and was caused by the other driver. He required major surgery and extensive physical therapy for 14 months. He endured extensive pain for another 30 months and was finally able to walk and returned to work in October 2001. He was able to maintain his finances during his recovery. (Tr. 31-32, 43-44; App. Ex. Y, Response to

SOR, Reasons for Financial Debts, dated October 20, 2013; App. Ex., W, Evaluation, dated March 26, 2001)

On October 18, 2001, three days after returning to work, he was hit again by a road curbing machine and broke vertebrae in his neck and received extensive face and head lacerations. The accident was not his fault. He hired an attorney to recover damages and medical expenses. (Tr. 33-34, 44; App. Ex. AA, Attorney's Letter, dated October 22, 2001) He had more physical therapy until July 2003. Since his normal and medical bills started to accumulate and he was not working, he sold his house and covered all of his medical, utility, mortgage, child support, and other debts. He was able to find employment and earned approximately \$125,000 a year. His finances were sound after this accident until he had another accident. (Tr. 50-51)

On May 2, 2009, Applicant was employed by a defense contractor at a salary of over \$145,000 per year. He had agreed to go to Afghanistan where his yearly salary would be \$250,000. He was traveling from one work site of the defense contractor to another site when he was involved in a third vehicle accident. He was hit from behind on an interstate highway, went down an embankment, and hit three trees. The accident resulted in three broken vertebrae in his neck and extensive cuts on his head, face, hands, and chest. (Tr. 34; App. Ex. DD, Hospital Records, dated May 5, 2009) He was placed on administrative leave and received short-term disability until August 17, 2009. The doctors determined that he could return to work. (Tr. 44-46; App. Ex. EE, dated May 20, 2009; App. Ex. A, at 2; App. Ex. AAA, letter, dated May 4, 2009)

After being told he could return to work, Applicant continued to have shoulder problems as a result of the accident, and he continued to receive medication and physical therapy. (App. Ex. EE, FF, and GG) On April 15, 2010, Applicant was given a Rehabilitation Capacity Evaluation to see if he could continue to work. He could not lift or carry anything with his right arm so he failed the test. (App. Ex. HH, Evaluation, dated April 15, 2010) Applicant received arthroscopic surgery on his shoulder and was referred to physical therapy. (App. Ex. II - LL, Medical Documents, dated August 16, 2010) He required extensive physical therapy until May 2011. He complained to the physical therapist that he continued to have pain in his shoulder. (Tr. 36-38; App. Ex. MM - RR) After seeing a new doctor and having an MRI examination, on May 22, 2011, his new doctor performed rotator cuff, bicep tenodesis, acromioplasty and AC resection to correctly repair the shoulder. During the shoulder surgery a five inch piece of catheter from the previous surgery was found in his shoulder and removed. He applied for temporary disability. (Tr. 46-48; App. Ex. WW, dated June 28, 2011)

Applicant was released by the doctors to return to work on September 22, 2011. (App. Ex. XX, dated July 28, 2011; App. Ex. YY, dated September 22, 2011) He was unable to find work in his field. He no longer had access to classified information. He submitted security clearance applications but they were not processed. He was told by his last employer that the position he had before his accident was no longer available. His health insurance had lapsed in May 2011 after the operation, so he had to get

different health insurance. He was also running out of funds to pay his health insurance. He hired an attorney to sue the original orthopedic surgeon for punitive damages for pain and suffering and medical bills. He notified his creditors that he was suing and hoped to recover sufficient funds to pay the debts that accumulated since April 30, 2010. Unfortunately, he lost the initial malpractice case and did not have sufficient funds to pay his attorney to continue the case. (Tr. 39-41, 48-50; App. Ex. SS – VV, various dates; App. Ex. ZZ, dated March 29, 2012)

During his periods of medical issues and physical therapy, Applicant continually received lucrative job offers that he was not able to accept. The facility security officer for a defense contractor testified that his company submitted Applicant for a security clearance for three separate positions between 2011 and 2012. However, no action was taken on their requests. In 2013, they again sponsored Applicant for a security clearance, which resulted in this case. If a security clearance is granted, he will be immediately hired for a position paying \$145,000 per year. (Tr. 23-30, 70-77; App. Ex. L – V and App. Ex. X, various dates)

Applicant has not been able to find employment in his field because he has been unable to receive a security clearance. Since he has been unable to work, he has not had a home since February 8, 2013. He lives in the basement of a friend's house and does odd jobs for the friend rather than pay rent. At times, he also lived out of his car. (Tr. 55-56) Applicant notified his creditors of his physical problems and his inability to work. He informed them that as soon as he could work and find employment, he would pay his debts. He also informed the child support case manager of his inability to work and his intent to pay the child support arrears as soon as he was back to work. (Tr. 16-22, 51-51; App. Ex. A- J, various dates) He applied for social security disability but was denied because he did not have sufficient time at work in the last few years. (Tr. 22-23; App. Ex K, Social Security Denial, dated July 17, 2010)

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. A security clearance adjudication is 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 because such a history is 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.

Credit reports and Applicant's admission show delinquent debts total approximately \$21,000. The delinquent debts 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 an inability to satisfy the debt.

I considered Financial Considerations 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); and 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). These mitigating conditions apply.

Applicant's finances were sound after his first two accidents. He was initially involved in an accident in 2001, but he received some disability and was able to return to work early enough not to incur delinquent debt. The second accident was in 2002. He sold his house to have funds to keep his bills current. In 2009, he was injured in the third automobile accident that required extensive medical and physical therapy. This caused him to loss employment and income. He had no flexibility in his finances because of the actions he took after the first two accidents. He did not receive disability, and was unable to work. He could not keep his medical debts and child support payments current. However, he did cut his expenses by living with other people or in his car. The accidents were not caused by Applicant, were unusual, and were beyond his control. Hopefully, for Applicant's sake, the accidents will not recur in the future. Applicant acted responsibly after the first two accidents to keep his finances current. He minimized his expenses and sold his house to pay his bills. He had no financial flexibility after the third accident, and he accumulated medical debts for his treatment, child support arrears, and he was unable to pay some minor debts. Applicant exhibited good judgment by keeping all of his creditors informed of his financial plight. Applicant's financial issues under these circumstances do not cast doubt on his current reliability, trustworthiness, or good judgment. There is no evidence of irresponsible behavior, poor judgment, or unreliable conduct by Applicant.

I also considered Financial Consideration Mitigating Condition 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). Applicant did not present any information to show he sought financial counseling. He is working to resolve his debts, and there is some indication that the financial problems are being resolved. However, the information on counseling and resolution is tenuous so I find that this mitigating condition does not apply.

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

Applicant demonstrated at one point a good-faith effort to resolve his debts. He sold his house in 2010 to get sufficient funds to be current with his debts. He only became delinquent again after his third accident and his inability to work. Applicant has lucrative job offers, and when employed he will have the financial ability to make payments on his debts. Normally, promises to pay delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner or otherwise acting in a financially responsible way. Applicant did all that he could under the circumstances to maintain financial integrity. After the first two accidents, he was able find employment to keep his finances current. After the third accident, he was unable to find employment even though he had lucrative job offers. His requests for a security clearance were not processed. He needs to be eligible for access to classified information to be employed in his field. He did cut his expenses and only incurred mostly medical bills he could not pay and was in arrears on his child support payments. Under the circumstances, his actions towards his finances were reasonable, prudent, and showed an honest adherence to his financial obligations. His management of his finances reflects favorably on his trustworthiness, honesty, and good judgment. Based on all of the financial information available, I conclude that Applicant 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 that Applicant worked for over 23 years for defense contractors and was granted eligibility for access to classified information during these 23 years. Applicant was able to maintain his finances after the first two of three accidents even though he was out of work, hospitalized, and receiving extensive rehabilitation therapy. He was unable to maintain his finances after the third automobile accidents resulting again in hospitalizations and extensive physical therapy. I also considered that his debts are not credit card debts, consumer debts, or other debts that may indicate frivolous spending. I considered that his inability to work led directly to his inability to pay medical and child support payments. Applicant presented sufficient information to establish that he acted reasonably and responsibly towards his delinquent debts. As noted, Applicant is not required to be debt-free or pay off all debt immediately. All that is required is that he acted responsibly under the circumstances, develop a reasonable plan to repay the debt, and show a serious intent to effectuate the plan. Applicant continually sought employment in his field and received lucrative job offers. He applied for access to classified information but the applications were not processed. Applicant took reasonable actions to maintain his financial responsibility. His past efforts provide confidence that he will continue to work on his financial responsibilities and be ready to make payments on the debt when he is employed. His responsible actions towards his financial obligations indicate he will be concerned and act responsibly in regard to classified information. He did so for 23 years before being injured. Overall, the record evidence leaves me without questions and doubts as to Applicant's judgment, reliability, trustworthiness, and his 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.n:	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