



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



In the matter of:)	
)	
)	ISCR Case No. 13-01153
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

12/30/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On November 26, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on December 19, 2013, and he elected to have his case decided on the written record. On January 30, 2014, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was provided to Applicant on September 22, 2014, and he received it on October 2, 2014. Applicant

was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information. The case was assigned to me on December 15, 2014.

Findings of Fact

Applicant admitted all allegations in the SOR. The admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 48 years old. He married in 1992 and has two children, ages 16 and 9. He attended college and earned an associate's degree in 1988, a bachelor's degree in 2002, and a master's degree in 2005. He was a member of the Air National Guard inactive reserves from December 1988 to September 1996.

Applicant was unemployed from January 2008 to September 2008, and April 2012 to June 2012. Some of his unemployment was the result of a medical condition. Applicant received unemployment benefits, and his wife worked part-time jobs during those periods. He attributed his financial problems partially to his medical problems, unemployment, and underemployment.¹

Applicant filed bankruptcy in September 2011. His Schedule F for creditors holding nonsecured nonpriority claims, listed the amount of \$138,286. Many of those debts were medical accounts, but there were also numerous debts for credit cards, utilities, and a personal loan. He explained in his answer to the SOR that he was unemployed for seven months, and because his wife was working part-time, they declared bankruptcy. His debts were discharged in January 2012. He has been employed by a federal contractor since June 2012, and his wife is now working full time.

The debts in SOR ¶¶ 1.e, 1.f and 1.g (\$42,682, \$65,473, and \$256, respectively) are delinquent student loans. After receiving financial interrogatories from the Government, Applicant entered into a loan rehabilitation program in October 2013. He was required to make consistent monthly payments of \$355 for nine months to bring the defaulted loans out of delinquency status. He complied with the terms of the program and the debts in ¶¶ 1.e and 1.f are no longer in default status. His new payment is \$472, which he made in September 2014. Applicant indicated the debt in SOR ¶ 1.g is included in the payment plan, but the documents provided do not support this. He did not provide evidence on what payments, if any, he made on his student loans when they initially became due.²

The debts in SOR ¶¶ 1.b, 1.c and 1.d (\$181, \$4,849, and \$685, respectively) are medical debts. In his financial interrogatories, he indicated he was arranging a payment

¹ Applicant provided tax returns from 2008 and 2011 to show his reduced income. Answer to FORM attachment 2.

² Item 6; Answer to FORM attachments 4-7.

plan to satisfy the debts. The debts were consolidated, and he began making payments of \$65 toward the balance in December 2013. He has made consistent payments since then.³

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 an 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.

³ Item 6; Answer to FORM attachments 6 and 7.

Section 7 of Executive Order 10865 provides that 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 relating to the guideline 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. I have considered the following two under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had debts discharged in bankruptcy in January 2012. He defaulted on his student loans and accumulated delinquent medical bills. I find the above disqualifying conditions apply to these facts.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following 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 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; and

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

Applicant is still resolving his delinquent debts. AG ¶ 20(a) does not apply because his debts are recent and ongoing. Applicant attributed his financial problems to periods of unemployment, underemployment, and medical problems. His first period of unemployment was in 2008. He filed for bankruptcy in 2011. After having debts discharged in 2012, he experienced another period of unemployment, which again caused him financial problems. These conditions were beyond his control. However, for the full application of AG ¶ 20(b) an applicant must have acted responsibly under the circumstances. Applicant began addressing his delinquent student loans and medical debts after he received the Government interrogatories in October 2013. He had been employed since June 2012. He did not act timely on his debts until he was confronted with the delinquencies by the Government. He acted responsibly after October 2013. AG ¶ 20(b) partially applies.

There is no evidence that Applicant received financial counseling. He entered into a loan rehabilitation program for the two largest student loans. He successfully completed the rehabilitation period, and the loans are no longer in a default status. He made the initial increased payment. He indicated that the rehabilitation program included three student loans, but there is no evidence documenting that the debt listed in SOR ¶ 1.g is included. Applicant entered a payment plan for the delinquent medical debts and has been making consistent payments into the plan since December 2013. His wife is now working full time. Applicant did not provide any information regarding his current finances, but he is making payments on all but one of the alleged debts in the SOR, which amount is negligible. There are clear indications that his financial problems are being resolved and are coming under control. AG ¶ 20(c) applies. Because Applicant did not begin to address the delinquent student loans and medical debts until he was confronted with Government interrogatories, I cannot find he initiated a good-faith effort to repay his overdue creditors or otherwise resolve his debts. AG ¶ 20(d) does not apply.

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 the 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 48 years old. He experienced periods of unemployment, underemployment, and medical issues. He had debts discharged in bankruptcy. He defaulted on his student loans and had delinquent medical debts. Since late 2013, he has been resolving these debts through consistent payments. His wife now works full time, which has contributed to the stability of their finances. Applicant has met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations.

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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge