



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



In the matter of:)	
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Applicant for Security Clearance)	ISCR Case No. 14-00119

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), dated February 27, 2014, 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 (AG) effective within the DOD on September 1, 2006.

In an April 7, 2014, response to the SOR, Applicant denied all 11 allegations raised, and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. The case was assigned to another administrative judge on May 15, 2014, then transferred to me on May 27, 2014, for administrative reasons. DOHA issued a notice of video teleconference hearing on June 11, 2014, setting the hearing for June 20, 2014.

The hearing was convened as scheduled. The Government offered five documents, which were accepted as Exhibits (EX) 1-5 without objection. Applicant offered testimony and 12 documents, which were accepted without objection as Exhibits (EX) A-L. The transcript (Tr.) of the proceeding was received on July 1, 2014, and the record was closed.

Findings of Fact

Applicant is a 37-year-old man who has been an operations supervisor for a defense contractor since June 2005. He served on active duty in the United States military from 1996 until 2001, then served as an inactive reservist until 2004. He was honorably discharged from military service. Applicant has two associate's degrees. He is presently single and has two minor daughters. At issue are 11 allegations concerning delinquent debts amounting to about \$38,000.

As of September 2009, while living with his mother, Applicant was in sound financial condition. He was encouraged to invest in a home of his own, which he did with only a minor impact on his finances. About a year later, Applicant and the mother of his eldest child began having problems. When she threatened to leave the state with their child, Applicant challenged her in court. In turn, the mother sued him for child support, although they had been providing equal physical and financial support for the child for years. Given no credit for his past financial support, the court ordered that he pay past and present child support. The court based the amounts on a recently acquired pay raise, which moved his salary from the \$30,000s to the mid-\$50,000s. Consequently, the value of his past years of contributions was artificially inflated, and, due to the retroactive nature of the payments, he was instantly deemed to be in arrears. His payments began in December 2010.

In the interim, Applicant received credit counseling and his youngest child was born. He contributed his fair share to that child's care and well-being. The mother of the child, however, ultimately took Applicant to court, too. There, the court based his allotments for child support on a figure even higher than Applicant's salary. (Tr. 22) Challenging this decision finally led Applicant to the brink of financial distress. (Tr. 30-31) In the end, Applicant was liable for approximately \$1,000 each month for each child until his arrearages were satisfied.

Applicant did his best to economize. He prepared meals at home, reduced his expenses, took a second job, and employed other measures to reduce his expenses. Such measures, however, could not help him address all his debts and creditors. He made the decision to focus on his mortgage payments as his priority. Consequently, some accounts became delinquent. In 2012, he intentionally took a lateral move some thought of as a demotion to another position. That job permitted him to earn overtime and be paid for travel, thus increasing his net income. As his available income increased, he started satisfying the debts at issue by addressing his debts in order, then bringing past-due accounts to a current status. The status of those debts follows:

- 1.a - Addressed. (Tr. 38, 47; SOR Response attachment A1 (2013 Order Vacating Judgment));
- 1.b - Settled. (Tr. 47; SOR Response attachment B and B1);
- 1.c - Addressed. (Tr. 40-41, 47; Duplicate account of 1.a, above);
- 1.d – In Repayment. (Tr. 49-50; SOR Response attachment C and C1);
- 1.e – Settled. (Tr. 43-45; Ex. G);
- 1.f - In Repayment. (Tr. 51-52);
- 1.g - In Repayment. (Tr. 52);
- 1.h - Settled. (Tr. 52-53);
- 1.i - In Repayment. (Tr. 53-54);
- 1.j - Account Current/Rehabilitated. (Tr. 54-55);
- 1.k - Account Current/Rehabilitated. (Tr. 54-55).

Those accounts currently in repayment are part of a comprehensive repayment plan Applicant initiated in 2011, before the issuance of the February 2014 SOR. The remaining accounts in that plan now have minimal balances, with a cumulative balance due of about \$1,100 as of the hearing date. He has made regular and timely payments on his repayment plan. Applicant remains timely on his rehabilitated, formerly past-due accounts (1.j-1.k). He has always been timely on his mortgage and court-ordered child support payments, the accounts he made his primary priority. He remains timely on his rehabilitated, formerly past-due accounts (1.j-1.k).

Applicant lives within his means. He has no outstanding delinquent debts. He reserves “a couple of grand” in his savings account for emergencies and has a savings account. (Tr. 55) Applicant invests in a 401(k) retirement account. He is in the process of setting up funds to secure his children’s future. (Tr. 55-56) He is presently in control of his finances. (Tr. 57-58) Applicant is a highly valued performer at his workplace.

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 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.

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 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.

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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant had acquired multiple delinquent debts. This is sufficient to raise two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate the finance-related security concerns in this case:

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 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;

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 initiated a good-faith effort to repay 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 received a significant raise in 2010, around the time a court assessed his child support obligation and a retroactive sum based on his newly acquired wage base. It then increased his child support further. The unforeseen sum caused Applicant to become late on some of his accounts while his prioritized obligations were deemed to be his child support and his mortgage. Despite measures to increase his income and minimize expenses, no significant progress was possible until 2012, when he accepted a lateral position which paid overtime and other excess wages for travel. With the resultant increase in income, Applicant was able to use his financial counseling skills and implement a plan to settle, satisfy, or go into repayment on the debts at issue. Moreover, two debts, which were simply past due, are now current. These efforts were exerted due to Applicant's sense of obligation, not the threat of losing his job or security clearance. Today, he lives within his means and is saving for both his and his children's future. In light of these considerations, I find that mitigating conditions AG ¶ 20(b)-(d) 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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 a credible, responsible, and mature man. He is educated and served honorably in the United States military. Despite being on cordial relations with the mothers of his two children, both took him to court for child support, which he had already been voluntarily paying. The rate of the payments imposed in 2010 and 2011, plus a retroactive sum deemed owed, strained Applicant's finances. He concentrated on those payments and his mortgage only. For nearly two years he tried to find a way to meet his delinquent debts. Ultimately, in 2012, he accepted a position that had the potential of paying a higher salary.

With the extra income, Applicant has been able to make considerable progress toward satisfying his debts. As of today, all the accounts at issue have been addressed in a positive manner, and Applicant has both the motivation and resources to satisfy the modest balances on those few accounts still in repayment. He is saving for his future and the future of his children. He has reserved a considerable cushion in his bank account for emergencies. In light of his efforts to address his delinquent debts, his current financial situation, and his improved understanding of how best to prioritize his debts and prepare for contingencies, I find security concerns are mitigated. Clearance 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.k:	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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge