



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



In the matter of:)	
)	
)	ISCR Case No. 14-02733
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

February 6, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 37-year-old employee of a defense contractor. He is alleged to be in debt to four creditors in the approximate amount of \$47,167. His rental property was foreclosed upon in 2011. He filed for Chapter 7 bankruptcy in November 2011, but it was dismissed in February 2012. He has acted responsibly with respect to his debts by resolving them all. Eligibility for access to classified information is granted.

Statement of the Case

On July 24, 2014, the Department of Defense 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; 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 September 1, 2006.

Applicant answered the SOR on September 8, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to another administrative judge on October 27, 2014, and then was reassigned to me on December 10, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 10, 2014, scheduling the hearing for January 6, 2015. It was rescheduled on December 11, 2014, for hearing on January 8, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibits (HE) I and Exhibits (GE) 1 through 8, which were admitted without objection. Applicant offered Exhibits (AE) A through E, which were admitted without objection. Applicant testified on his own behalf. The record was left open for receipt of additional documents. On January 19, 2015; January 20, 2015; February 2, 2015; and February 4, 2015, Applicant presented AE F through AE J. Department Counsel had no objections to AE F through AE J and they were admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on January 20, 2015.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. He has worked for his employer since November 2009. He is married and has no children. He possesses a bachelor's degree awarded in 2000. (GE 1; Tr. 53.)

As listed in the SOR, Applicant was alleged to be in debt to four creditors in the approximate amount of \$47,167. The Government also expressed concerns over a 2011 foreclosure and a Chapter 7 bankruptcy petition that was filed in November 2011, but dismissed in February 2012. Applicant admitted allegations 1.a, 1.e, and 1.f. He denied allegations 1.b, 1.c, and 1.d, because he resolved them. His debts, foreclosure, and bankruptcy filing are identified in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 2; GE 4; GE 5; GE 6; GE 7; GE 8.)

Applicant attributes his financial delinquencies to a series of unforeseen events. In 2005, he was living and working in another state. He purchased a home there for \$440,000. He financed the purchase with a down payment of \$45,000, a primary mortgage of \$355,000, and a second mortgage of \$44,000.¹ He lost his job in 2007 and moved in with his parents in his present state of residence. He leased the house to tenants, but it had several periods of vacancy in 2007 to 2008, which caused Applicant financial strain. Applicant found employment in 2008 and was then able to negotiate a lower interest rate with the mortgage company. In 2009, he found a better job and he moved out of his parent's home. He began renting an apartment near his job. His tenants were paying their rent and he was financially stable. He invested in two beauty salons with his business partner. However, in 2010, one of his beauty salon ventures faltered. At the same time, his tenants moved out and he was unable to pay the mortgages on his property. He was unable to sell the property because the value of the house had declined due to the economic downturn. Despite his economic problems at the time, he was somehow able to take a cruise to Grand Cayman and Jamaica in

¹ SOR allegation 1.f pertains to the foreclosure of this property by the primary mortgage holder. SOR allegation 1.e pertains to the second mortgage on this home.

November 2010. (GE 2.) The house was foreclosed upon by the bank in July 2011. He testified that he received a 1099-C issued to him by the primary lender after the foreclosure. (Tr. 21-25, 28-30, 35-36, 47-50.)

He filed Chapter 7 bankruptcy in November 2011, as stated in SOR allegation 1.a, after he realized the depth of his financial problems resulting from the salon's failure. Not only was he indebted to the creditors identified in the SOR, but he also had other delinquent accounts at that time including two judgments. (GE 2.) He testified he had the Chapter 7 bankruptcy dismissed when he realized that he would receive an income tax refund of \$20,000 for the 2011 tax year that he could use toward repaying his delinquencies. However, he claimed in his March 27, 2012 subject interview that the bankruptcy was dismissed because he "had forgotten when his court date was and was on business travel." (GE 2; GE 3; Tr. 21-25, 39.)

Since 2012, Applicant has slowly satisfied each of his delinquent debts, including those listed in the SOR.² (Tr. 21-25, 39.) His paid debts include the following:

Applicant was indebted on a credit card in the amount of \$1,080, as stated in SOR allegation 1.b. He presented a letter from this creditor that shows he satisfied this debt on September 26, 2012. This debt is resolved. (AE D; Tr. 33-34.)

Applicant was indebted on a credit card in the amount of \$1,931, as stated in SOR allegation 1.c. He presented a letter from this creditor that shows he satisfied this debt on October 21, 2014. This debt is resolved. (AE C; Tr. 34.)

Applicant was indebted to a collection agent for a telecommunications company in the amount of \$56, as stated in SOR allegation 1.d. This debt was for a cable modem that the telecommunications company claimed had not been returned. Applicant sent the company the receipt he had from the return of the modem, and the collection company sent him a letter acknowledging that the account has been satisfied. This debt is resolved. (AE B; Tr. 35-36.)

Applicant was indebted on his second mortgage, discussed above, in the amount of \$44,100, as stated in SOR allegation 1.e. Applicant testified that he did not realize that he was liable for the second mortgage after the house was foreclosed upon. However, once he was made aware of this continuing delinquency, he contacted this creditor. The creditor offered to accept a settlement of \$2,500 on this account. On January 23, 2015, Applicant made a payment of \$2,500 to this creditor. The creditor sent Applicant a letter dated January 28, 2015, that shows this debt as "paid in full." This debt is resolved. (AE H; AE I; AE J; Tr. 25, 30, 45, 47.)

When Applicant filed for Chapter 7 bankruptcy, he completed the requisite financial counseling. He testified that the counseling helped him learn to budget his expenses. He presented a copy of his monthly budget for January 2014 to December

² Applicant has also satisfied the two judgments and two personal loans. (GE 2.)

2014. It shows that Applicant has a surplus each month of between \$1,500 to \$11,310.³ No new delinquencies appear on his credit report. (GE 8; AE A; AE E; Tr. 51-52.)

Applicant continues to own one beauty salon, but has no financial liabilities for the business other than paying its monthly rent of \$1,700. The business is successful and either breaks even or has a small monthly profit. (Tr. 52-53.)

Applicant's colleague and personal friend wrote a letter of support on Applicant's behalf. He believes Applicant is trustworthy, exercises good judgment, and has integrity. Applicant's work performance appraisals reflect he is a valued employee. (AE F; AE G.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. 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 AG ¶ 2 describing 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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

³ This figure does not include Applicant's wife income. Applicant explained that he and his wife keep their finances separate. She has her own money that she earned from the sale of her separate business. (Tr. 53, 57.)

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 protect or 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.

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, as follows:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant was in debt to four creditors in the approximate amount of \$47,167. He also lost a home to foreclosure in 2011, and filed Chapter 7 bankruptcy in November 2011, but dismissed it in February 2012. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

Two Financial Considerations mitigating conditions under AG ¶ 20 fully apply:

- (c) the person has received 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's delinquent debt, foreclosure, and bankruptcy were due, in part, to irresponsible financial choices made from 2009 to 2011. However, since 2012, he has completed financial counseling and learned to budget his resources. He has settled all of his past-due accounts. He is current on all of his revolving credit accounts. He has a significant monthly surplus. Applicant has demonstrated that his financial problems are resolved. AG ¶¶ 20(b) and 20(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):

(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 respected by his colleague and performs well at work. No new delinquencies have been incurred. He has sufficient income to satisfy his monthly obligations.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns. I conclude the whole-person concept for Applicant.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	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.

Jennifer I. Goldstein
Administrative Judge