



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



In the matter of:)	
)	
)	ISCR Case No. 14-02756
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

06/09/2015

Decision

CURRY, Marc E., Administrative Judge:

Applicant has either satisfied his delinquent debts, or he is paying them through payment plans. He has mitigated the financial considerations security concern. Clearance is granted.

Statement of the Case

On November 21, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR, admitting all of the allegations and requesting a hearing.¹ The case was assigned to me on March 20, 2015. On April 1, 2015 the Defense Office of Hearings and Appeals issued a notice of hearing scheduling the case for April 20, 2015.

At the hearing, I received four Government exhibits marked and identified as Government Exhibits (GE) 1 through 4, and I received five Applicant exhibits that I marked and identified as Applicant Exhibits (AE) A through E. Also, I considered the testimony of Applicant. DOHA received the transcript (Tr.) on April 27, 2015.

Findings of Fact

Applicant is a 35-year-old married man with two children, ages eight and ten. He was married in 2007 and has been separated since 2012. (Tr. 68) His youngest child is from his marriage and his oldest child is from a previous relationship. (Tr. 45)

Applicant graduated from high school in 1997, and earned an associates degree in 1998. (Tr. 19) In 1999, he joined the U.S. Marine Corps where he served honorably through his discharge in 2003. Currently, he is both working and attending college full-time. He is majoring in forensic science. (Tr. 18)

While in the military, Applicant was a combat photographer. (GE 1 at 17) After leaving the military, he worked various odd jobs for a year before getting a job as a latent print photographer in 2004. (Tr. 44) Latent print photography is part of the larger field of battlefield forensics. (Tr. 20) He has worked for various employers in this field since then. (Tr. 20, GE 1 at 15) For the past year, he has worked for a government contractor as an intermediate latent print technician. (Tr. 20) In this position, he supervises other technicians. He has held a security clearance since 2003. (Tr. 42)

Applicant is highly respected on the job. According to his supervisor, he is “a solid performer” who has demonstrated trustworthiness and reliability. (GE A)

In May 2012, Applicant and his wife separated. (Tr. 54) Between June and July, Applicant purchased two cars. The first car loan was in his name only, and he cosigned the second car loan with his estranged wife. (Tr. 55, 58) He purchased her a car because “he didn’t want her to be left without a vehicle.” (Tr. 55) Together the loans totalled approximately \$20,000. Applicant traded in two cars to facilitate the purchase. (Tr. 53)

In October 2012, Applicant lost his job. Although he found a new job with minimal interruption in employment, it paid approximately \$30,000 less than his previous job. (Tr. 60) Subsequently, Applicant began to have trouble making ends meet. By August 2013, both cars had been repossessed and resold. Applicant owed deficiencies of

¹Applicant’s answer was undated.

\$12,814 (subparagraph 1.b) and \$7,294 (subparagraph 1.c), as listed in SOR subparagraphs 1.b and 1.c. Also by August 2013, the creditor of a debt consolidation loan had obtained a \$2,443 judgment against him (subparagraph 1.a), and a credit card account was delinquent in the amount of \$672 (subparagraph 1.d). (Tr. 49, 60-62)

Applicant has been promoted three times since switching jobs in October 2012. As he has been promoted, his salary has gradually increased, enabling him to begin satisfying his delinquencies. (Tr. 21) He has been making \$143 towards the satisfaction of the debt listed in subparagraph 1.a since August 2013. (AE B at 16) The current balance is approximately \$1,300. In November 2013, he satisfied the debt listed in subparagraph 1.d in its entirety. (Answer at 5) In December 2014, he began satisfying the car loan listed in subparagraph 1.c with \$150 monthly payments. In March 2015, he contacted the assignee of the car loan listed in subparagraph 1.b, and arranged a payment plan under which he is to make an initial \$1,000 downpayment followed by bi-monthly \$175 payments. (Tr. 50) Applicant made the downpayment that month, as agreed, and has made the first \$175 payment. (AE B at 2; Tr. 51)

Applicant satisfied approximately \$500 of debt owed to two creditors that were not listed in the SOR. Specifically, he satisfied a \$250 debt owed to one of these creditors by October 2013, and a \$250 debt owed to the other unlisted creditor by July 2014. (AE B at 18-21)

Applicant currently earns \$85,000 per year. (Tr. 60) He meticulously tracks his spending. He has approximately \$350 of monthly discretionary income. (AE E at 1; Tr. 67) He is currently seeking a credit counselor. Applicant met with a representative of a credit counseling company in March 2015, but decided not to retain him because the initiation fee was too high. (AE D at 1; Tr. 65)

From approximately May 2012 to August 2012, Applicant abused his company travel card. Specifically, after using the card for business expenses, he submitted travel expense receipts to his company for cash reimbursements to be applied to the credit card, but instead, used the reimbursements to pay personal expenses. (Tr. 39) He misappropriated company funds in this manner for three months. After receiving a company credit card bill that he was unable to pay, Applicant reported the problem to his company who made him satisfy the debt by garnishing his wages for three consecutive pay periods. (Tr. 39-41)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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) Between 2012 and 2013, Applicant incurred approximately \$23,000 of delinquent debt. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply. For a three-month period in 2012, Applicant used cash reimbursements for company travel to pay his personal bills. AG ¶ 19(d), “deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense fraud, filing deceptive loan statements, and other intentional financial breaches of trust,” also applies.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 attributes his financial problems to his marital separation in May 2012 and the loss of his job in October 2012. Any circumstance beyond his control that may have contributed to his marital separation is outweighed by the bad judgment of purchasing a car with his wife after they separated. Moreover, assuming that his marital separation caused his financial problems, he did not act responsibly, as he used

company expense reimbursement income to pay personal bills instead of his travel credit card.

Nevertheless, Applicant deserves some credit for acting responsibly after the significant income loss resulting from the loss of his job in October 2012. Specifically, he began paying some of his debts, and making payment plans for others as his salary on the new job gradually increased. Currently, all of his debts are either satisfied, or are being satisfied through payment plans. Applicant keeps a budget and meticulously tracks his spending. AG ¶ 20(b) partially applies, and AG ¶¶ 20(c) and 20(d) apply in their totality.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

- (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.

Applicant's abuse of his travel credit card was serious. However, he self-reported the infraction and repaid the money. Moreover, as his salary increased over the years, he has correspondingly been paying more of his delinquent debts. Currently, Applicant has either satisfied his delinquencies, including two that were not listed in the SOR, or has been paying them through payment plans. His finances are meticulously organized. Upon consideration of the strong presence of rehabilitation and the amount of time that elapsed since the travel credit card-related infraction, together with Applicant's favorable work record, and the length of time that he has held a security clearance, I conclude that he has mitigated the security concerns.

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.e:	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.

MARC E. CURRY
Administrative Judge