



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



In the matter of:)
)
) ISCR Case No. 14-02827
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: D. D., Personal Representative

04/17/2015

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 17, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on October 14, 2014, and requested a hearing. The case was assigned to me on February 3, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 18, 2015, setting the hearing for March 5, 2015. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection.

Applicant testified and offered exhibits (AE) A through E, which were admitted into evidence without objection. The record was held open for the parties to submit additional evidence. Applicant submitted AE F and G, which were admitted into the record without objection. DOHA received the hearing transcript (Tr.) on March 11, 2015.

Findings of Fact

Applicant is 36 years old and has worked for a government contractor since September 2009. He has a high school diploma and has taken some college courses. He is married and has six children, five of which still live at home. One of his children has special medical needs. He served in the Air Force for seven years and was honorably discharged in 2004 at the pay grade of E-4.¹

The SOR alleges Applicant was delinquent on eight accounts and filed a bankruptcy petition in 2001 that resulted in a discharge of his debts. The debts were listed on credit reports from January 2014 and January 2015. Applicant admitted all the debts in his answer to the SOR except for SOR ¶ 1.h, which he denied.²

Applicant's financial difficulties began when he was furloughed for a month during the federal government shut down in 2013. He had no income at that time to pay his monthly bills, the most significant of which was his home mortgage. Applicant's wife immediately contacted their mortgage holder to work out a payment plan during the duration of the furlough. The mortgage company advised Applicant that he should stop making payments and seek a mortgage modification. Applicant applied for a modification, but it was denied. Thereafter, Applicant's wife worked with the mortgage company to establish a repayment plan and has been making payments under the plan, which calls for them to make additional principal payments to catch up on the earlier missed payments. Also during this time, Applicant incurred several other delinquent debts. The status of the debts is as follows:³

SOR ¶ 1.a:

This is a judgment in the amount of \$609 that Applicant satisfied in December 2012. This debt is resolved.⁴

¹ Tr. at 31-33; GE 1.

² Answer; GE 3-4.

³ Tr. at 43-49; Answer.

⁴ Tr. at 39; Answer.

SOR ¶ 1.b:

This is a consumer debt in the amount of \$205. The Government's offered credit report shows that this account is paid. This debt is resolved.⁵

SOR ¶ 1.c:

This is a telecommunications debt in the amount of \$465. Applicant returned some equipment and paid the remainder of the debt to settle this account in October 2014. This debt is resolved.⁶

SOR ¶ 1.d:

This is a medical debt in the amount of \$500. Applicant presented documentation showing that he established a payment plan to pay this debt. This debt is resolved.⁷

SOR ¶¶ 1.e and 1.f:

The Government conceded that these debts were paid. Documentation also shows that these debts are paid. These debt are resolved.⁸

SOR ¶ 1.g:

This is Applicant's mortgage account, which had a past-due amount of \$4,255. As noted above, Applicant arranged a repayment plan with the mortgage holder and presented documentation that he has made all the payments under the plan. This debt is being resolved.⁹

SOR ¶ 1.h:

This is a consumer debt in the amount of \$425. Applicant provided documentation showing this debt has been paid. This debt is resolved.¹⁰

⁵ Tr. at 39; GE 4.

⁶ Tr. at 40-41; Answer.

⁷ Tr. at 42-43; AE A, B, F.

⁸ Tr. at 43; GE 4.

⁹ Tr. at 43-49; AE C-E.

¹⁰ Tr. at 51-53; AE G.

SOR ¶ 1.i:

Applicant filed a Chapter 7 bankruptcy in 2001 because of debts accumulated during a prior marriage.¹¹

Applicant's wife testified that they currently have disposable income of about \$2,000 at the end of each month. They only have one credit card and it has a current balance. They are current on their taxes. Applicant and his wife received financial counselling from Applicant's mother who is an accountant. They are on track to make all their payments including their mortgage.¹²

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 that 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 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 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

¹¹ Tr. at 55-56.

¹² Tr. at 64, 69, 71, 78.

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. Such decisions entail a certain degree of legally permissible extrapolation about 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 Executive Order 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant had multiple delinquent debts and a prior bankruptcy. The evidence is sufficient to raise the disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

Several Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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.

The delinquent debts attributed to Applicant are recent, however, the bankruptcy is over ten years old. He has paid all the debts and set up workable payments on his mortgage account. Since he has made a concerted effort to repair his financial position, it is reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant's debts became delinquent when he was furloughed from his job in 2013. This was a condition beyond his control and, once he was able to do so, he acted responsibly by contacting his mortgage company and arranging for a repayment plan. He was also able to pay the remaining delinquent debts. AG ¶ 20(b) applies.

Applicant received credit counseling from his accountant mother. He has made a good-faith effort to resolve all the debts and work out a repayment plan to pay his mortgage listed on the SOR. He supplied documentary evidence showing the debt payments and mortgage repayment plan. AG ¶ 20(c) 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 relevant 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.

I considered Applicant's military service, as well as his furlough from work in 2013, which affected his financial status. I found Applicant to be honest and candid about the circumstances that led to his debts. He and his wife took immediate action to resolve their mortgage obligation after being furloughed. They also quickly paid their other outstanding debts. I find it unlikely that Applicant will find himself in a similar future situation.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations 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.i: 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.

Robert E. Coacher
Administrative Judge