



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)
)
) ISCR Case No. 14-02979
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He has three debts totaling approximately \$15,000, which he is attempting to address. His financial problems were contributed to by the death of his mother and eldest daughter. His second daughter was, at one time, in a coma, and expenses during and after her recovery have also impacted his finances. He has mitigated the financial considerations security concerns. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on September 5, 2014, the DoD issued a Statement of Reasons (SOR) detailing financial considerations

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD 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.

security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. In an undated response, Applicant answered the SOR and requested a hearing. On January 15, 2015, I was assigned the case. On January 28, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on February 10, 2015. I admitted Government's Exhibits (Ex) 1 through 7 and Applicant's Exhibits A through J, without objection. Applicant testified at the hearing, as did his facility security officer (FSO), and one additional witness. The record was held open to allow Applicant to submit additional information. Additional material (Ex. L through R) was submitted and admitted into the record without objection. On February 19, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted all of the factual allegations in the SOR, but indicated some of the balances on the delinquent loans had changed. His admissions are incorporated herein. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 49-year-old standardization manager who has worked for a defense contractor since September 2003, and seeks to retain a security clearance. He currently holds confidential level access. In April 2009, he was his company's employee of the quarter, and in 2011 and 2013, employee of the year. (Exs. H, I, J) His annual salary is \$91,000 per year. (Tr. 43) His wife works for the state and is paid \$26,000 per year. (Tr. 43) Their annual household income is approximately \$120,000. (Tr. 44)

From 1984 through 1992, Applicant was on active duty in the U.S. Marine Corps as an aircraft electrician. (Tr. 27) From December 1990 until July 1991, he served in combat in Operation Desert Storm. (Tr. 67, 68) He separated as a sergeant (E-5) with a 20 percent disability rating from the U.S. Department of Veteran's Affairs for a back injury. (Tr. 28) He receives \$200 monthly in disability pay. (Tr. 28) Since leaving active duty, he has continued working with the Navy and Marine Corps. (Tr. 41)

Applicant's co-workers, supervisors, and friends view Applicant as hard working, knowledgeable, dedicated, compassionate, honest, and trustworthy. (Exs A, B, D) He is a valuable asset to the company, and a reliable self-starter, with great integrity and energy. (Ex C) He has received a special recognition award, which included a \$5,000 award,² certificate of appreciation, and a superior performance award for April 2014. (Exs. E, F, G) A former base commander, and then program manager where Applicant works, who has known Applicant for ten years, stated Applicant's integrity was beyond reproach and that he made sure maintenance was properly done. (Tr. 63) At one time, they took the serious action of grounding the fleet due to safety reasons, based on Applicant's input. (Tr. 63)

² The \$5,000 award is given to only one employee each year in his division of his company. (Tr. 40) Applicant used the award to pay bills and get caught up on his accounts. (Tr. 40)

In September 2013, when he completed his Electronic Questionnaires for Investigations Processing (e-QIP), he listed several delinquent accounts. (Ex. 1) Until 2008, he had no financial problems. His FSO testified stating Applicant had self-disclosed his financial problems from the very beginning. (Tr. 58) He told her of the death of his first daughter, the death of his mother, and his second daughter being in a coma. (Tr. 59) In December 2013, Applicant had a Personal Subject Interview (PSI) during which he was asked about his debts. He stated,

[he] incurred these debts due to family emergency, medical problems, which have since been resolved, that ended up being very costly and put other bills on the back burner. [He] is currently doing well financially and is working to pay off his current debts. (Ex. 3)

Applicant has two children with his first wife, to whom he was married from 1984 to 1989, and a son and two daughters from his spouse he married in 1993. (Tr. 48) Until 2008, Applicant did not have any financial problems. In 2009, his son³ was in high school and another daughter was in graduate school. (Tr. 17)

In 2008, Applicant's oldest 26-year-old daughter died suddenly of an accidental drug overdose. (Tr. 38, 39) He discovered her vehicle, on which he had cosigned, had been repossessed (SOR 1.f, \$8,726). (Tr. 16) Even though the fair market value of the car was less than the loan balance, he contacted the creditor and asked if he could get the car back and start making payments on it. (Tr. 50) He was told the car would be returned only if the entire balance due on the loan was paid. He was unable to do this. (Tr. 50)

In 2009, almost a year later, Applicant's second daughter went into a coma due to a drug overdose. (Tr. 39) She lived halfway across the United States from Applicant. Both his daughters had periodically been living with his ex-wife and his mother. (Tr. 39) His mother, suffering from cancer, was in the same hospital as his daughter in the coma. His mother died during this period. The day he buried his mother, he had to remove his daughter's property from an apartment from which she had been evicted. (Tr. 58)

Applicant spent \$15,000 on his daughter's and mother's funeral expenses and moved his other daughter to a location near him. (Tr. 52) His second daughter was a single mother of an infant and three-year-old who was in a custody battle.⁴ Applicant and his wife made several trips back and forth from their home state to the hospital's location. Eventually, his daughter was transported to a hospital in Applicant's home state. When his daughter recovered, he paid for his daughter's expenses to establish a household and obtain a car. His daughter has reconciled with her children's father and they now happily live together.

³ At the time of the hearing, Applicant's son was a college freshman. A state law pays college tuition to those who served in combat or in their stead, their children. (Tr. 40, 48)

⁴ Applicant paid \$1,500 of the attorney's fees in the custody dispute. (Tr. 54)

During this period, Applicant had a credit card account (SOR 1.g, \$4,458) that went delinquent. (Tr. 36) The debt does not appear on his current credit report. (Tr. 36) The charged-off credit card account appearing at SOR 1.h (\$1,904) does not appear on his current credit report. (Tr. 37) Following the hearing, Applicant sent letters to the creditors of the two charged-off accounts and the creditor of the repossessed car offering to settle his account with them and asking them to contact him. (Exs. L, M, N, Tr.34)

Applicant had a charged-off home improvement store credit account (SOR 1.a, \$922), which has been paid in full. (Ex. A-1, Tr. 30) He made \$147.50 monthly payments on a charged-off account (SOR 1.c, \$790).⁵ (Ex. C-1, Tr. 30) He asserts the two charged-off accounts (SOR 1.d, \$736 and SOR 1.e, \$737) are the same account. (Tr. 31) In November 2014, the obligation was “settled in full” on the account after he had paid \$409. (Ex. D&E-1, Tr. 32)

Applicant’s spouse handles the household finances, and he receives an allowance from her. (Tr. 47) He has \$65,500 in his company’s retirement program. (Ex. K, Tr. 42) He had borrowed \$20,000 from his retirement to pay the funeral, transportation expenses, and additional expenses. (Tr. 53) He repays \$390 monthly on the loan. (Tr. 56) He is not receiving any calls or mail from creditors demanding payment. (Tr. 41) He is current on his \$572 monthly truck payments and current on his \$583 monthly mortgage payments on his home worth \$95,000. (Tr. 41, 43) He has a company credit card with a zero balance. (Tr. 42)

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 must be considered 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 interests of 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

⁵ Applicant asserts the charged-off accounts in SOR 1.b, \$822, and SOR 1.c, \$790, with the same company are the same debts even though they have different account numbers. (Tr. 31)

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 applicant or proven by Department Counsel. . . .” The applicant 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a

history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Stating in 2008, Applicant experienced financial problems. He has delinquent debt, following a vehicle repossession, and two charged-off accounts totaling approximately \$15,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five 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;

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

(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.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by the death of his oldest child and his mother, and the expenses incurred with his second child being in a coma and expenses during and following her recovery. After his oldest daughter died, he discovered the car he had cosigned with her had been repossessed. He also incurred legal fees in paying for his daughter's child custody dispute. He incurred expenses when he moved his daughter closer to him and the expenses in setting up a household for her. It is unlikely he will again incur financial problems due these unusual events. AG ¶ 20(a) applies.

Under AG ¶ 20(b), Applicant experience unexpected funeral expenses for both his mother and daughter. As previously stated, he incurred additional expenses and legal fees following his second daughter's coma. AG ¶ 20(b) applies.

Under AG ¶ 20(c) and ¶ 20(d), Applicant has paid six of the nine SOR debts. He has kept in contact with and attempted to settle the three remaining debts. He was unaware of the repossession of his daughter car until after his daughter's death. Even though the loan balance exceeded the fair market value of the vehicle, he wanted to continue making payments on the loan, but the creditor refused. He has maintained contact with this creditor and the two other charged-off accounts.

Applicant is not receiving calls or letters from creditor's demanding payment. He is current on his mortgage, truck payment, retirement fund loan payments, utility accounts, and other financial obligations. He has more than \$65,000 in his retirement plan. AG ¶ 20(c) and ¶ 20(d) apply.

The debts in SOR 1.b, \$822, and SOR 1.c, \$790, both owed to the same company are the same obligation and have been paid. The debts in SOR 1.d, \$736, and SOR 1.e, \$737, are the same obligation and have been paid. AG ¶ 20 (e) applies to these duplication delinquent accounts.

Applicant has yet to pay the three remaining delinquent obligations totaling \$15,000. Half of the delinquency resulted from the repossession of his daughter's car. He has again contacted each of these three creditors in an attempt to settle these accounts. He will continue working with the creditors until he takes care of the three remaining delinquent accounts.

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. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. He cosigned on a car for his

daughter. He was unaware it had been repossessed until after his daughter's death. Credit card debt was incurred during the time his daughter and mother died and he was making numerous trips to be with his daughter before she was moved to a location near him. Until these unusual events occurred, he had good finances. These events will not recur.

Applicant's work performance has been outstanding. He was employee of the quarter once and employee of the year twice. He received a \$5,000 award, which he used to pay his debts. That award is given to only one employee in the entire company each year. Those who know Applicant speak highly of him. He kept in contact with his creditors. He fully disclosed his family situation to the FSO and on his e-QIP. He has always been open and forthright about his finances. It is for these reasons I believe he will continue to communicate with the three remaining creditors until a repayment arrangement has been made. His household income of approximately \$120,000 is sufficient to address these three debts totaling \$15,000.

Of course, the issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) 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 security concerns arising from his 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, Financial Considerations: 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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge