



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



In the matter of:)
)
) ISCR Case No. 14-00216
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: Mark Lee Smith, Esq.

06/10/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On March 18, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This 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 within the Department of Defense on September 1, 2006.

On March 28, 2014, Applicant answered the SOR and requested a hearing. The case was assigned to me on April 28, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 1, 2014. The hearing was convened as scheduled on May 19, 2014. At the hearing, Department Counsel offered

Government's Exhibits (GE) 1 through 4 that were admitted into evidence without objection. Applicant testified, called three witnesses, and offered Applicant's Exhibits (AE) A through F that were admitted into evidence without objection. The record was left open until June 2, 2014, to provide Applicant an opportunity to submit additional documents. Applicant timely submitted AE G that was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 4, 2014.

Findings of Fact

Applicant is a 33-year-old computer systems administrator who works for a defense contractor. He has worked for his current employer since January 2011. He graduated from high school in June 2000 and earned a bachelor's degree in May 2008. He served in the U.S. Air Force from July 2001 to July 2005 and received an honorable discharge. He married in June 2006 and divorced in October 2012. He has primary custody of his only child who is six years old. He has held a security clearance since about 2001 without incident.¹

The SOR alleged five delinquent debts totaling about \$66,633 (SOR ¶¶ 1.a – 1.e). In his answer, Applicant denied each allegation. However, substantial evidence was admitted into the record that established the alleged debts.²

Applicant attributed his financial problems to his divorce and to tenants who stopped paying rent. In 2008, Applicant and his wife purchased a home and had a monthly mortgage loan payment of \$2,171. In 2009, they moved to another city because of a change in his employment and began renting the home for \$1,700 per month. In July 2011, Applicant and his wife separated. She was not working at that time. In about August 2011, their tenants stopped paying the rent. Applicant then attempted to rent the property to new tenants and to obtain a modification of the mortgage loan, but those efforts were unsuccessful. After his wife obtained a job in December 2011, she informed him that she could not assist him with the mortgage loan payments. She eventually filed bankruptcy.³

About three months before his divorce in 2012, Applicant entered into a mediation agreement that provided he would make his wife's car payments of \$533 per month until the car was paid in full and then pay her \$533 per month for an additional 12 months. He also agreed to pay \$600 per month as child support as well as pay his child's school, day care, and summer camp expenses. The agreement designated which party would be responsible for certain debts and provided the responsible party would hold the other party harmless from any liability arising from an assigned debt. Applicant was unable to make the payments required under the mediation agreement

¹ Tr. 40-42, 61-63, 95-96; GE 1, 2.

² Applicant's Answer to the SOR.

³ Tr. 53-55, 96-97; GE 1-4; AE C, D, E; Applicant's Answer to the SOR.

as well as the mortgage payments. He fell behind on the mortgage loan payments and on other debts. The home was sold at a foreclosure sale in November 2011.⁴

SOR ¶ 1.a – collection account for \$522. This was a cellular telephone account that was placed for collection in November 2011. Applicant had a dispute with the creditor because he did not receive a telephone signal at his home. The creditor assured him the problem would be fixed. A delay was incurred as the creditor attempted to fix the problem. The delay caused Applicant to miss the 30-day expiration date for canceling the account and resulted in a deactivation fee. Applicant reached an agreement to settle the debt for \$235 and paid that amount in December 2013.⁵

SOR ¶ 1.b – mortgage loan past due \$56,465 in foreclosure with a balance owed of \$318,300. This was the mortgage loan on the foreclosed home discussed above. The foreclosure sale resulted in a mortgage loan deficiency of \$140,267. In January 2014, the mortgage company sent Applicant a letter advising that it had elected to write off the mortgage loan and hold all obligors harmless for the resulting deficiency balance. At the time of the hearing, Applicant had not received an Internal Revenue Service Form 1099-C – Cancellation of Debt, but indicated that he would make arrangements to pay any taxes arising from that cancelled debt.⁶

SOR ¶ 1.c – collection account for \$9,374. This was a credit card account that had a date of last activity of July 2012. In his Answer to the SOR, Applicant indicated that this was his ex-wife's account, and he was never responsible for it. When he contacted the creditor, he was informed that he had no obligation under this debt, but the creditor would not provide him any paperwork to that effect. At the hearing, he provided a copy of the mediation agreement that showed his wife had taken responsibility for this debt and agreed to hold him harmless for it. This debt was not listed on Applicant's two most recent credit reports.⁷

SOR ¶ 1.d – past-due account for \$149. This was a medical debt that was placed for collection in July 2008. In his Answer to the SOR, Applicant indicated that he paid this debt, but provided no paperwork showing it was paid. In his post-hearing submission, he provided a bank record that reflected he paid this debt on May 20, 2014.⁸

⁴ Tr. 40-48, 53-55, 59-61, 64-66, 69-76, 82; GE 1-4; AE C, D, E; Applicant's Answer to the SOR. Applicant testified that his child support payment is \$500 per month and is deduced directly from his pay check. See Tr. at 41, 82.

⁵ Tr. 82-83; GE 1-4; Applicant's Answer to the SOR.

⁶ Tr. 48-51, 53, 64-66, 69-76, 83-84; GE 1-4; AE D; Applicant's Answer to the SOR.

⁷ Tr. 45-48, 84-85; GE 2-4; AE C; Applicant's Answer to the SOR.

⁸ Tr. 76-79, 81-82, 85-94; GE 1-3; AE G; Applicant's Answer to the SOR.

SOR ¶ 1.e – collection account for \$123. This was a medical debt that was placed for collection in September 2011. Applicant provided documentation showing this debt was paid in May 2013.⁹

Applicant submitted no evidence showing he received financial counseling. He provided a budget that showed his monthly net income was \$6,257 and his monthly expenses and debt payments were \$4,327, which left him a net monthly remainder of \$1,930. When he shares rent with a roommate, his net monthly remainder increased to \$2,380. At the time of the hearing, he had a roommate. He also presented a spreadsheet that tracked monthly the amount of his overall debt from February 2012 to May 2014. The spreadsheet revealed that his overall debt has been reduced from \$83,833 to \$53,127 during that period. In a Personal Financial Statement, Applicant reported he had \$24,410 in stocks and bonds.¹⁰

In about 2011, Applicant and his wife received a tax refund of about \$3,800 from the Internal Revenue Service (IRS). He cashed the refund check and gave his wife half of the proceeds. Later the IRS determined the refund was issued in error. At that time, Applicant did not have the money available to repay the refund in full. He entered into a repayment agreement with the IRS to repay that money. This debt was not alleged in the SOR.¹¹

Three coworkers testified that they knew Applicant both professionally and personally. They indicated that Applicant was fiscally responsible and kept charts of his finances and spending habits. One indicated that Applicant was very prudent with his spending and never made spurious purchases. In general, they described him as frugal. All of them considered him reliable and trustworthy. In a letter, Applicant's roommate stated that Applicant lives within his means.¹²

While in the Air Force, Applicant served in Iraq. He received three Air Force Achievement Medals and was selected as an Airman of the Quarter and Communication Information Systems Airman of the Year.¹³

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.

⁹ Tr. 81-82, 90-91, 101; GE 1-3; AE D; Applicant's Answer to the SOR.

¹⁰ Tr. 38-42, 56-59, 96-97; GE 2; AE B, F.

¹¹ Tr. 68-69, 102; GE 2.

¹² Tr. 16-37; AE A.

¹³ Tr. 78, 103.

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 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 accumulated delinquent debts that he was unable or unwilling to satisfy over a number of years. This evidence is sufficient to raise the above disqualifying conditions.

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;
- (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.

Applicant and his ex-wife separated in July 2011 and divorced in October 2012. In August 2011, their tenants stopped paying rent. The breakup of Applicant's marriage and the failure of his tenants to pay rent were conditions beyond his control. When the tenants stopped paying the rent, Applicant could not afford to make payments on his mortgage loan and also meet his other financial commitments. He attempted unsuccessfully to rent the property to others and to modify the mortgage loan payments. The home was eventually sold at a foreclosure sale. The mortgage creditor has written off the mortgage loan and agreed to hold Applicant harmless for the mortgage loan

deficiency. Applicant may incur a tax liability arising from the foreclosure, but indicated that he will appropriately address that issue. AG ¶ 20(b) applies.

Applicant has settled and resolved the debts in SOR ¶¶ 1.a, 1.d, and 1.e. AG ¶ 20(d) applies to those debts.

As part of his divorce, Applicant entered into a mediation agreement in which he assumed responsibility for some of the marital debts and agreed to pay child support and temporary alimony. He is meeting those commitments. In that agreement, his ex-wife assumed responsibility for the debt in SOR ¶ 1.c. When the issue of Applicant's responsibility for that debt arose, he called the creditor and was informed that he was not responsible for that debt. His two latest credit reports do not list that debt. He provided sufficient documentary evidence to show that he has a legitimate basis for disputing that debt. AG ¶ 20(e) applies to SOR ¶ 1.c.

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.

Applicant served on active duty in the Air Force in Iraq and received three Air Force Achievement Medals for his military service. He is a responsible father who has primary custody of his child. He encountered financial setbacks but has taken reasonable steps to resolve those problems. He is living within his means and developed a plan for eliminating his debt. His financial situation is stable and improving.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the financial considerations security concerns.

Formal Findings

Formal findings 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.

James F. Duffy
Administrative Judge