



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



In the matter of:)
)
) ISCR Case No. 14-00266
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

07/07/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On March 18, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on April 3, 2014, and requested a hearing before an administrative judge. The case was assigned to me on May 13, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 14, 2014. I convened the hearing as scheduled on June 12, 2014. The Government offered exhibits

(GE) 1 through 3, and they were admitted into evidence without objection. Applicant and one witness testified. Applicant offered Applicant's Exhibit (AE) A through D, which were admitted into evidence without objection. I left the record open until June 18, 2014, to allow Applicant to submit additional documents. He provided AE E, and it was admitted into evidence without objection. On June 13, 2014, Applicant requested he be permitted to submit additional documents past the June 18, 2014 deadline. His request was granted and he submitted AE F, which was admitted into evidence without objection. The record closed on June 23, 2014. Hearing Exhibit I is email correspondence between Applicant, Department Counsel, and me. DOHA received the hearing transcript (Tr.) on June 25, 2014.

Findings of Fact

Applicant admitted the allegations in the SOR with explanations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 53 years old. He has bachelor's and master's degrees. He married in 1986 and has one child, age 22. He has held a security clearance for approximately 27 years. He has been continuously employed since 1985.

Applicant claimed an ongoing dispute with the credit card company regarding the debt listed in SOR ¶ 1.a for \$48,230. Applicant explained he had a long relationship with the credit card company and had obtained a loan for approximately \$36,000 to \$38,000, which he used to start a small business. He took advantage of a promotional interest rate of 2.9%. He believes the rate on the loan applied for approximately two years. After proper notification, sometime later the interest rate increased to 21.99%. Applicant was upset and contacted the credit card company explaining he had been a loyal customer and requested a lower interest rate. The credit card company offered to reduce the interest rate to 16.99% for six months. The credit card company informed him that: "[d]ue to the unsecured nature of credit card lending some of the ways credit card lenders can manage risk are by adjusting credit lines and appropriately pricing for the risk."¹ Applicant stated that the increase in interest rate was "a reflection of the then current 'market conditions.'" He was angry the credit card company was using inflated interest rates to compensate for the loss of business income.²

Applicant intentionally defaulted on the credit card in approximately 2009. He had two settlement offers in 2010 from the credit card company, first for \$25,000, then for \$20,000. Applicant did not accept the offers. He stated he has tried to work out a settlement but was unable to get the amount he wanted. The debt was charged-off in 2011. He stated he considered paying the debt, but felt the credit card company had taken advantage of him. At first, he admitted he was emotional about the situation, and then he was just stubborn. He indicated that he has the resources to pay the debt, but

¹ Answer to SOR.

² Tr. 36-48, 55-60.

did not consider it financially advantageous. He admitted that he owed between \$36,000 and \$38,000, but he chose to remain stubborn because he wanted to settle on his terms. He did not feel a moral obligation to pay the \$48,000, even though he derived a benefit from what was initially lent to him. The additional amount of the balance is attributed to interest and penalties. His last contact with the creditor was in 2012.³

Applicant admitted at his hearing that in hindsight he made a mistake. He felt justified, but his mistake was in not settling the debt sooner. He did not believe this matter should be a security concern because it was merely a dispute with the credit card company, and it was a personal matter.⁴

Applicant's certified financial planner, advisor, and friend testified on his behalf. He has known Applicant since approximately 1988. He believes Applicant is kind-hearted, honest, fair and straight forward. He believes Applicant's most important attribute is truthfulness. He is familiar with Applicant's finances and portfolio. He encouraged him to not carry balances on credit cards because interest rates are better at banks, and the credit card companies will raise their rates. He would normally advise his clients to pay off credit cards with high interest rates, transfer the balance to a card with a lower rate if possible, or call the company and negotiate a lower interest rate. If none of these things work, he would recommend paying off the balance.⁵

The witness confirmed he advised Applicant to pay his large credit card debt or negotiate a lower interest rate. He did not recommend defaulting on the credit card. He indicated that a borrower might be able to make a case that the credit card company was being predatory if their interest rates were too high and unreasonable. He advised Applicant to settle the debt.⁶

Post-hearing, Applicant contacted the credit card company and negotiated a settlement of the debt for \$28,232. He paid the settlement on June 19, 2014.⁷

Applicant secured a student loan for his daughter's education. The loan balance is approximately \$65,000. His daughter recently graduated from college, and he has made the first loan payment of \$470. He indicated he will faithfully honor the repayment program. He indicated the loan has a fixed interest rate so there will not be any surprises.⁸

³ Tr. 37-48, 53, 55-60, 67.

⁴ Tr. 69-72.

⁵ Tr. 20-33.

⁶ Tr. 20-33.

⁷ AE F.

⁸ Tr. 60-64.

Applicant has approximately nine credit cards that he maintains balances on and at least three loans, which include the student loan. None of the credit cards or loans are in default. He has the resources to pay the amount required to stay current on the credit cards.⁹

Applicant provided a copy of a 2007 senior leadership survey, his resume, and a character letter. The letter was provided from a coworker and friend of 12 years. Applicant is described as a man of character and integrity who can be trusted. He makes ethical and correct decisions and is always truthful. He is well respected in the community and is a faithful husband and father.¹⁰

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 are 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, 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 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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

⁹ Tr. 48-55, 65-67; GE 2, 3; AE A.

¹⁰ Tr. 48-51; AE C, D, E.

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 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 *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:

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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following is potentially applicable:

- (a) inability or unwillingness to satisfy debts; and

- (e) consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant had a delinquent credit card debt for \$48,230 that he was unwilling to pay and it was charged off. Applicant has nine open credit cards with balances, and three loans, which include a student loan. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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 action to resolve the issue.

Applicant was unwilling to pay a debt he acknowledged he owed because he was dissatisfied that the credit card company raised its interest rates. He initially failed to negotiate a settlement despite offers from the credit card company. He admitted he made a mistake because he was being stubborn. AG ¶ 20(a) does not apply because he did not resolve the debt until after the hearing. Although he has a significant number of credit cards with balances, he has sufficient financial resources to make regular payments on the debts. He also understands the importance of maintaining good credit, and default on the credit cards is unlikely to recur. AG ¶ 20(b) does not apply because the conditions that resulted in the financial problem were within Applicant's control and he failed to act responsibly under the circumstances. AG ¶ 20(e) does not apply because Applicant admitted owing the debt, and deliberating defaulting on the debt because he was angry the interest rates were increased.

After the hearing, Applicant negotiated a settlement with the credit card company and paid the settlement. Applicant is current on his other debt obligations and has the resources to meet his monthly payments. Applicant is making payments on the student loan debt. His finances are under control. AG ¶¶ 20(c) applies. AG ¶ 20(d) does not apply because Applicant did not make a good-faith effort to repay the large credit card debt and only paid it after his security clearance was in jeopardy.

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 53 years old. He has a solid consistent work record and has held a security clearance for 27 years. Applicant admitted he made a mistake when he failed to resolve his credit card debt because he was unhappy with the company's business practices. Although he has numerous credit cards and loans that have balances, he consistently meets his monthly payments and does not have any other delinquent debts. He has sufficient resources to pay his bills. His finances are no longer a security concern. 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 mitigated the security concerns arising under the financial considerations guideline.

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.c:	For Applicant

Conclusion

In light of all of the circumstances it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge