



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



In the matter of:)
)
) ISCR Case No. 14-00431
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

06/12/2015

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On May 5, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on June 26, 2014, and provided additional information on July 13, 2014. He elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on

February 24, 2015. The FORM was mailed to Applicant who received it on April 8, 2015. As evidence, the Government offered Items 1 through 10, which were admitted without objection. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted Item 11-1 through 11-39, which was admitted into the record without objection. The case was assigned to me on May 26, 2015.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations, except for his denial of ¶¶ 1.c and 1.d. The admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 39 years old. He has been married since September 1997. He has five children, ages 21, 19, 19, 17, and 8. He has worked for his current employer, a defense contractor, since April 2006. He is a high school graduate. He served on active duty in the Army from 1993 to 2003 and received an honorable discharge.¹

The SOR lists a federal and a state tax lien, two judgments and five delinquent debts that total approximately \$49,076. These debts are supported by credit reports from June 2013 and February 2015.²

Applicant's financial difficulties began when he was laid off from his job from January to April 2006. Additionally, his wife was handling the tax filing responsibility for the family because she was laid off from her job for about five years. During this time, she failed to timely file 2010 and 2011 federal and state tax returns. When she did file the past returns, penalties and interest accumulated that resulted in the lien filings. They also over-claimed withholding exemptions, which resulted in underpayment of taxes for 2007 through 2009. Applicant was unaware of these events because his job required frequent travel and he believed his wife was handling these items. He found out about the tax liability when he signed for a certified letter in September 2012. The status of the debts is as follows:³

SOR ¶ 1.a (Federal Tax Lien \$34,767):

Applicant established a voluntary monthly payment plan with the IRS. His wages were not garnished. He has consistently made his monthly payments (\$250) starting in

¹ Items 3-4.

² Items 1, 6, 9.

³ Items 2, 7-8.

May 2014 through May 2015 and provided documentation of the same. The IRS withdrew the lien on the property in December 2014. This debt is being resolved.⁴

SOR ¶ 1.b (State Tax Lien \$1,478):

Applicant provided proof that the lien of judgment for unpaid state taxes was satisfied in April 2015. This debt is resolved.⁵

SOR ¶ 1.c (Judgment \$4,772):

Applicant admits acquiring the debt, but disputes that it is unpaid. He provided documentation showing he set up a payment plan with a collection attorney in January 2009 to pay this debt. He also documented two payments of \$200. He was unable to obtain the complete payment history that would show the debt is paid. The most recent credit report submitted by the Government does not list this judgment, which corroborates Applicant's assertion that the debt was paid some years ago. This debt is resolved.⁶

SOR ¶ 1.d (Consumer debt \$3,573):

Applicant provided documentation showing that a settlement was reached on this account when it was in litigation in March 2009 and the resulting civil action was dismissed in April 2010. This debt is resolved.⁷

SOR ¶ 1.e (Consumer debt \$460)(Duplicate account with SOR ¶ 1.f):

Applicant provided documentation showing he paid this debt in April 2013. This debt is resolved.⁸

SOR ¶¶ 1.g and 1.h (Medical debts \$158, \$50):

These were medical debts incurred by Applicant's wife. He provided documentation showing SOR ¶ 1.h was paid in October 2014. He also paid SOR ¶ 1.g, but the documentation is not available. These debts are resolved.⁹

⁴ Item 11-1 to 11-24.

⁵ Item 11-1, 11-25.

⁶ Items 9, 11-1; 11-26 to 11-28.

⁷ Item 11-1, 11-29 to 11-30.

⁸ Item 11-2, 11-31.

⁹ Item 11-2, 11-32.

SOR ¶¶ 1.i (Judgment \$3,331)

Applicant provided documentation showing that the debt resulting in this judgment was incurred by his wife severally. The resulting judgment was only against his wife. He successfully disputed this account. This debt is resolved.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.

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 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 that an 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.

¹⁰ Item 11-2, 11-33.

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

AG ¶ 18 expresses the security concern for financial considerations:

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 them under AG ¶ 19 and the following potentially apply:

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

Applicant accumulated delinquent debts over an extended period of time. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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; 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.

The delinquent debts attributed to Applicant were recent. He has resolved his state tax debt, established a voluntary payment plan for his federal tax debt, which resulted in the IRS withdrawing its tax lien, and paid or successfully disputed the remaining debts. His efforts to repair his financial position make it 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 accumulated delinquent debt when he suffered through a period of unemployment and he failed to keep up with his tax obligations. Although his unemployment is a condition beyond his control, his actions to timely take care of his debt issues were not responsible. AG ¶ 20(b) does not apply.

There are clear indications that all but one of the debts have been resolved through payment or successful dispute. Applicant made good-faith efforts to resolve the taxes and debts listed on the SOR. He supplied documentary evidence showing the payments were made and the debts were paid. AG ¶ 20(c) and ¶ 20(d) apply. He successfully disputed SOR ¶¶ 1.f and 1.i. AG ¶ 20(e) applies to those debts.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). There is also no requirement that an applicant pay every debt listed in the SOR, only that he remove concerns about his reliability and trustworthiness raised by those debts. See ISCR Case No. 14-00504 at 3 (App. Bd. August 4, 2014). Applicant has taken significant action to resolve his debts.

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 the 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 guideline 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 considered Applicant's past military service. The evidence supports his showing that he is again financially stable. He resolved his tax issue, is resolving his federal tax issue, and satisfied or successfully disputed the remaining debts. The record contains sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, 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, 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