



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



In the matter of:)	
)	
)	ISCR Case No. 14-00655
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

06/26/2014

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 25, 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 April 4, 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 20, 2014. At the hearing, Department Counsel offered

Government's Exhibits (GE) 1 and 2. Applicant testified and offered Applicant's Exhibit (AE) A. The record was left open until June 3, 2014, to provide Applicant an opportunity to submit additional matters. Applicant timely submitted documents that were marked as AE B through L. All proffered exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 4, 2014.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer since December 2012. He graduated from high school in 1984 and attended two and a half years of technical school. He is a licensed substance abuse treatment counselor. He has been divorced twice. He married his third wife in July 2013. He has two children, ages 9 and 19. His 19-year-old son is serving in the U.S. Army. Applicant has held a security clearance since about December 2012 without incident.¹

The SOR alleged ten delinquent debts totaling about \$49,690 (SOR ¶¶ 1.a – 1.j). In his answer, Applicant admitted each allegation with comments.²

In May 2007, Applicant and his ex-wife started a substance abuse treatment facility in State A. Bank loans were used to start that business. The treatment facility was successful initially and grew as the demand for its services increased. Applicant and his ex-wife took out a second mortgage on their home and obtained personal lines of credit to fund the treatment facility's growth. These loans were being paid as agreed until the fourth year of the treatment facility's operation.³

In January 2011, the treatment facility's regular weekly reimbursements from the state's Medicaid and Medicare systems were cut dramatically without any warnings. Applicant and his ex-wife immediately made inquiries about the reductions, but initially failed to receive any adequate answers. They noticed that similar organizations were experiencing the same funding reductions. They were eventually informed that federal and state funding for these types of services had been cut by 20% to 35%. They responded by closing a satellite clinic and consolidating services into their main facility. They also made the decision to drain their individual savings and retirement accounts to keep the treatment facility operating.⁴

Due to the Medicaid and Medicare funding reductions, Applicant and his ex-wife struggled to meet their personal financial commitments. These circumstances created stress for him and his family. They received foreclosure notices on their home mortgage loan and default notices on their lines of credit. After exhausting all options to keep the

¹ Tr. 3-5, 43; GE 1.

² Applicant's Answer to the SOR.

³ Tr. 16-19, 30-31, 40- 41; Applicant's Answer to the SOR.

⁴ Tr. 16-19, 30-31, 33-34, 40-41; Applicant's Answer to the SOR.

treatment facility operating, they began closing it on April 1, 2011. The debts in SOR ¶¶ 1.a through 1.g. arose from the treatment facility's operations. The medical debts in SOR ¶¶ 1.h through 1.j arose from treatment Applicant received for stress-related illnesses during that period. Following closure of the treatment facility, Applicant and his family moved to State B, where he currently resides.⁵

In his Electronic Questionnaire for Investigations Processing (e-QIP) dated October 22, 2013, Applicant listed that he was unemployed from April 2011 to September 2011 and from October 2012 to December 2012. He divorced in December 2012 and indicated his financial problems were a "huge component" in the divorce.⁶

In his Answer to the SOR, Applicant stated that he is "paying back what we can, when we can" He indicated that his plan is to have all of the debts fully satisfied by September 2016, when his family will receive a trust fund disbursement that is earmarked to satisfy these debts completely.⁷

At the hearing, Applicant stated that he would have the ability to pay these debts in the future. He provided a letter from his current wife indicating she is scheduled to receive over \$25 million in September 2016 from a structured settlement arising from a lawsuit. Their intent was to pay the debts upon release of the money. In this regard, Applicant testified,

. . . rather than begin to chip away at these debts that I carry with me through minuscule payment plans, that honestly would be symbolic at best. We have the resources. We have the ability to pay these off in one lump [at] a specific date in the very near future, relatively speaking very near future; and that is the path that we are choosing in terms of how do we alleviate these things and remedy these financial debts that we carry, rather than chipping away at them little by little and piece by piece; and frankly trying to determine that we could pay X-amount of dollars to this debt, but not to this debt, and arbitrarily making these decisions between these different creditors probably wouldn't sit well with the ones that we wouldn't be able to choose to make payments towards and the fact that we have the resources [to pay] all of these debts off in full at one time seems to be a better option across the board for everyone involved.⁸

The debt in SOR ¶ 1.a is a collection account in the amount of \$44,057. This debt accounts for 88% of total amount of the alleged debts and was the second mortgage on Applicant's house in State A. This debt had a date of last activity of February 2011. He testified that, after he began experiencing financial problems, he

⁵ Tr. 16-19, 31; Applicant's Answer to the SOR; GE 2.

⁶ Tr. 19, 42-43; Applicant's Answer to the SOR.

⁷ Applicant's Answer to the SOR.

⁸ Tr. 19-27, 32-33; AE A, F.

tried to sell that house through a regular sale and then as a short sale. He also tried to dispose of the property through a deed in lieu of foreclosure. However, his efforts to dispose of the property were unsuccessful. He thought that house sold at a foreclosure auction in 2012 and the sales price covered the first mortgage, but not the second mortgage. Information on the other debts follows:⁹

SOR ¶	Amount	Date of Last Activity or Date Assigned for Collection
1.b	\$693	May 2012
1.c	\$590	March 2012
1.d	\$472	January 2012
1.e	\$2,000	October 2011
1.f	\$1,211	August 2012
1.g	\$236	May 2013 ¹⁰
1.h	\$196	May 2011
1.i	\$126	May 2012
1.j	\$109	May 2012

At the hearing, Applicant provided no proof of payments or payment plans for the alleged debts. He also indicated that he had not notified any creditors of his plan to pay the debts in a lump sum. In his testimony, he indicated that he was not sure whether it would be better to pay the debts all at once as he planned or to address some of the smaller debts through payment plans. He stated that he would start payment plans for the smaller debts if that was a better course of action.¹¹

Applicant's current wife is unemployed and she has bone and pancreatic cancer. Although she is covered by his health insurance, he periodically pays her medical treatment copays. In the past year, she has been hospitalized four or five times. He testified that he was living paycheck-to-paycheck, but had not incurred any new delinquent debts since the summer of 2012. I found Applicant to be honest and forthcoming. He was a credible witness.¹²

In his post-hearing submission, Applicant submitted a letter from an insurance company confirming the structured settlement discussed above. He indicated that his monthly income was \$3,200 and his monthly expenses were \$3,175, which left him a net monthly remainder of about \$25. He provided letters reflecting that he informed the creditors holding the debts in SOR ¶¶ 1.a, 1.d, 1.e, 1.f, and 1.g that he intended to pay those debts in September 2016 and, if he was able to pay them sooner, he would do so.

⁹ Tr. 27-32, 35-39, 41-45; GE 2.

¹⁰ The date the last activity on this debt is unknown. It was assigned for collection in May 2013. See GE 2.

¹¹ Tr. 27-28, 35-39. Department Counsel informed Applicant that neither he nor I could advise him on how to proceed.

¹² Tr. 21, 28, 39-45.

He sent letters to the creditors holding the medical debts in SOR ¶¶ 1.h, 1.i, and 1.j stating he would make payments of \$15 per month until those debts were paid and provided copies of the first \$15 checks sent to those three creditors.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.

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

¹³ AE C-L.

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 to satisfy for an extended period. 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

In 2011, Applicant's substance abuse treatment facility business began to encounter financial difficulties as state funding for such programs was cut. He used his savings and retirement accounts to try to keep the business operating, but it eventually failed. From April 2011 to September 2011 and from October 2012 to December 2012, he was unemployed. He divorced in December 2012. His financial problems were a significant factor in that divorce. The failure of his business, his unemployment, and his divorce were conditions beyond his control that contributed to his financial problems. When faced with the financial problems arising from his treatment facility, he attempted to sell his home and also attempted to dispose of it through a deed in lieu of foreclosure, but those efforts were unsuccessful.

None of the alleged debts predate the failure of Applicant's business. A review of his credit report supports his testimony that he has not incurred any new delinquent debts since the summer of 2012. In short, his financial problems arose from the conditions beyond his control noted above.

In July 2013, Applicant remarried. His current wife will receive a large structured settlement in September 2016. They intend to use those funds to pay the debts. Such a plan amounts to a promise to pay in the future. The Appeal Board has consistently held that such promises to pay in the future are not a substitute for a meaningful track record of debt payments. See ISCR Case No. 03-02097 at 5 (App. Bd. Mar. 17, 2005) and ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). While the evidence in this case shows that he will most likely have the ability to pay the debts in the future, little weight is given to such a promise to pay in the future.

Since obtaining employment following the failure of his business, Applicant has been living paycheck-to-paycheck and has very little discretionary funds for paying the debts. He testified that he thought it was best to pay the debts in a lump sum upon his wife's receipt of the structured settlement. Considering the existence of the structured settlement and his limited means for resolving the debts, that position was not unreasonable. During the hearing, however, he reconsidered that position based on Department Counsel's questions. In his post-hearing submission, he provided letters showing that he informed some creditors that he intended to pay their debts in September 2016 and established \$15 repayment plans for three of the small medical debts. Given his current financial situation, the \$15 payments is the best he can do currently to resolve the debts.

Applicant credibly testified that he intended to pay the debts. In this case, there is no evidence of high-living or irresponsible expenditures. He is currently living within his means. His financial problems are under control and occurred under circumstances that are unlikely to recur. His delinquent debts, although ongoing, do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) and 20(c) partially apply. AG ¶ 20(b) applies. AG ¶ 20(d) slightly applies.

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.

On his security clearance application, Applicant reported no illegal drug use, alcohol-related incidents, or criminal activity. He successfully operated a substance abuse treatment facility for a number of years. In 2011 and 2012, he encountered financial setbacks that were beyond his control that resulted in the loss of his business. For the past two years, he has been living within his means and his financial situation stabilized. He will pay these debts to the best of his ability given his current limited resources.

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.j:	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