



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No: 14-00946
)
)
Applicant for Security Clearance)

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

03/11/2015

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated two delinquent debts in 2011 that totaled less than \$20,000. Circumstances beyond his control contributed to the financial problems. He has made monthly payments on both debts since May 2014. Resulting financial security concerns were mitigated. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Statement of the Case

On September 20, 2013, Applicant submitted an electronic Questionnaire for Investigations Processing (e-QIP) as part of a re-investigation for his security clearance. On June 7, 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.¹ The action was taken under Executive Order

¹ The SOR initially issued on May 1, 2014, but was re-issued on June 7, 2014, because the May 2014 SOR was not signed. (Tr. 28.)

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 for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (Answer) on July 8, 2014, and requested a hearing before an administrative judge. On December 16, 2014, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On January 2, 2015, DOHA issued a Notice of Hearing, setting the case for January 21, 2015. The case proceeded as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified. He offered Applicant Exhibits (AE) 1 through 4 into evidence without objection. The record remained open until February 12, 2015, in order to provide Applicant time to submit additional documents. I received the hearing transcript (Tr.) on February 24, 2015. Applicant timely submitted three exhibits that I marked as AE 5 through 7, and admitted into the record without objection.

Findings of Fact

In his Answer to the SOR, Applicant admitted both allegations. The admissions are incorporated herein.

Applicant is 47 years old. He was married to his first wife from October 1992 to November 2007. They have two children, ages 17 and 19. One child attends college and the other is a high school senior living with his former wife. He married his second wife in June 2011. She has three children, one of whom lives with them. Another child is attending high school, and one is trying to enter college. (Tr. 39.) Applicant earned an associate's degree from an Air Force community college, and over 200 credit hours from different universities. (Tr. 18.)

Applicant enlisted in the Air National Guard after completing high school in 1985. He activated for deployment in December 1990 and deactivated in August 1991. From October 1994 until May 1999, he served on active duty at the National Guard Bureau. He was a program manager, at the rank of master sergeant. After leaving active duty, he went back to Reserve status until January 2002. He then moved from his home state to State 2, and transferred to that state's Air National Guard in November 2002. Subsequently, he moved to State 3, and transferred to that state's Air National Guard where he served until 2005, at which time he moved again and transferred to State 4's Air National Guard. He remained in State 4 until 2007, when he returned to his home state. He served until 2008 and retired with 20 years of credited service and 23 years of service in the Air National Guard. At the time of retirement with the rank of Master Sergeant, E-7, he was the supervisor of all operations for enlisted personnel. (Tr. 21.)

In February 2004, Applicant began working as a program manager for his current employer, a defense contractor. He now works in marketing and sales. He has held a Secret security clearance since 1985 when he enlisted. (Tr. 23.)

Applicant attributed his financial problems to his divorce in 2007, costs related to two subsequent relocations, purchase of household items, and an inability to sell a home, resulting in two mortgage payments. As part of his divorce decree, he assumed two-thirds of the marital debts. In 2011 his monthly child support payments increased from \$426 to \$1,083. He also pays many of his work related costs and travel expenses to see his children twice a month. Those total between \$850 and \$1,000 a month. (Tr. 26-28.)

In October 2013, a Government investigator interviewed Applicant about his finances, including two delinquent credit cards. During his testimony, Applicant said that he was financially unable to address the debts at the time of the interview. (Tr. 30.)

Based on credit bureau reports (CBR) dated November 2002, September 2013, and January 2015, the SOR alleged two delinquent debts totaling \$17,632 that began accumulating in 2011. (Tr. 24.) The status of each debt is as follows:

SOR ¶ 1.a. The \$14,596 debt owed to a bank for a credit card debt is being resolved.² Since May 2014 Applicant has been paying \$100 per month on the debt. (AE 4.)

SOR ¶ 1.b. The \$3,036 judgment owed to a bank for a credit card debt is being resolved. On April 3, 2014, an order was entered in which Applicant agreed to begin making monthly payments of \$70, which he has done since May 2014. (AE 2, 4.)

Applicant submitted a family budget. He and his wife have a net monthly income of \$10,500. Their monthly expenses total \$10,489, and include two mortgage payments, child support for one child, college payments for another, payments on the above credit card debts, and other items. Applicant intends to pay the delinquent credit card debts until they are resolved, and anticipates increasing the payments in May or June 2015 when he completes child support payments for one child and payments on a 401(k) loan for \$11,000 that he made in 2011 or 2012. (Tr. 31: AE 6.) He has two open credit cards which are current and have a total balance of \$1,900. (Tr. 32.) Other than the two delinquent SOR-listed debts, his other debts are current. (Tr. 34.) He intends to place his previous home on the real estate market this spring. If he sells it, he will have additional money to use resolving debt. (Tr. 40.) He has not participated in credit or financial counseling. (Tr. 35.)

Applicant testified candidly and honestly. He said he is a "patriot" and has served this country for 23 years. (Tr. 41.) He took full responsibility for the financial problems. (Tr. 40.) He acknowledged that it is in his best interests to resolve the two debts. (Tr. 41.)

² The balance on this debt was \$18,696 in May 2014, when Applicant began making payments. As of January 2015, the balance was \$17,896. (AE 3.)

Applicant's employer is aware that his financial problems created security clearance concerns. His employer, who has known him for 10 years, wrote that Applicant "is one of the top performers" for the company. (AE 7.) He stated that Applicant is "a person of high moral character." (AE 7.)

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 (AG) list potentially disqualifying and mitigating conditions, which are useful 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 avoided drawing inferences grounded on mere speculation or conjecture.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that an adverse decision shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

As documented by CBRs, Applicant began accumulating delinquent debts in 2011 that he has been unable to resolve until recently. The evidence is sufficient to raise both disqualifying conditions.

After the Government produced substantial evidence of those two disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets forth conditions that could potentially mitigate financial security concerns:

- (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 has two delinquent debts, which arose in 2011, over four years ago, and total less than \$20,000. Given that amount of money and his current payment arrangements, those debts do not cast doubt on his current reliability, or trustworthiness. AG ¶ 20(a) has some application. The delinquent debts arose as a consequence of a divorce, child support payments, relocations, and the inability to sell a piece of property. Those were circumstances beyond his control. Because he did not present sufficient evidence demonstrating that he attempted to responsibly manage debts when they began accumulating in 2011, only a partial application of AG ¶ 20(b) is warranted. Applicant did not provide evidence that he has participated in credit or financial counseling; however, he did supply his budget, which included payments on the debt, and a plan to pay off the two delinquent debts when more money becomes available. Hence, his finances are coming under control, and AG ¶ 20(c) has some application. He is making monthly payments on the two debts, exhibiting a good-faith effort to resolve them, and supporting the application of AG ¶ 20(d). He does not dispute either debt, so AG ¶ 20(e) is not relevant.

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). They include the following:

(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) 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 include 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 facts and circumstances surrounding this case. Applicant is a 47-year-old man, who honorably served in the military for over 20 years, and has successfully worked for a defense contractor for the past 11 years. He has held a security clearance during most of those years. Subsequent to a divorce in 2007, he incurred numerous expenses related to child support, establishing his household, and relocations. In 2011 two debts became delinquent. Those debts total less than \$20,000 and are being repaid. He is current on other monthly financial obligations. Given his acceptance of responsibility for those debts, his long history of military service, and his understanding of the importance of resolving the debts, it is unlikely that similar problems will arise in the future. There is no evidence in the record from which to conclude that he will not honor his financial commitment regarding the two debts.

The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge