



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-01104
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

10/17/2014

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, Applicant has mitigated security concerns for financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On April 8, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to update a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated June 23, 2014, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on July 9, 2014. He admitted two delinquent mortgage debts listed in the SOR (SOR 1.a, and 1.b), and provided an explanation why the mortgage debts were delinquent. He denied an insurance debt (SOR 1.c), and a vehicle repossession debt since the debt had been paid (SOR 1.d). Department Counsel was prepared to proceed on August 29, 2014, and the case was assigned to me on September 2, 2014. DOD issued a Notice of Hearing on September 9, 2014, scheduling a hearing for September 25, 2014. I convened the hearing as scheduled. The Government offered three exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 3. Applicant offered four exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through D. I left the record open for Applicant to submit additional documents. Applicant timely submitted six additional documents I marked and admitted into the record without objection as AX E through J.¹ The record closed on October 14, 2014. I received the transcript of the hearing (Tr.) on October 6, 2014.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 45-year-old high school graduate working as a facility security officer for a defense contractor. Applicant served 11 years on active duty in the Army from 1988 until 1999 as a counter-intelligence specialist. He has been eligible for access to classified information for over 26 years since he entered the Army at age 19. He received an honorable discharge when he left active duty. He first married in 1991 and divorced in 1994. He had one child from this marriage. He married again in August 2002. His wife had three children from a previous marriage. Applicant has four children, one biological and three stepchildren. He has no support responsibilities for any of the children since they are all grown. There is one child at home but she is self-supporting. Applicant will provide support to his biological son at times when requested. Applicant and his wife are both employed and have a combined monthly net income of approximately \$13,300. Their net monthly expenses are approximately \$9,800, leaving them approximately \$3,500 in net monthly discretionary funds. (Tr. 11-12, 15-16, 24-29, 57-61; GX 1, e-QIP, dated April 8, 2013)

The SOR alleges and credit bureau reports (GX 2, dated April 16, 2013, and GX 3, dated August 29, 2014) confirm a mortgage debt past due for \$20,114, and a charged off mortgage debt for approximately \$96,502. The SOR alleges and credit reports also confirm an insurance debt in collection for \$593, and a vehicle repossession debt charged off for \$16,607. Applicant admits the delinquent mortgage debts but not the delinquent insurance and repossession debts.

¹ Department counsel had no objection to the post-hearing exhibits. (GX 4)

Applicant was employed by a defense contractor as a security official when he left the Army in 1999. He switched employers as a security official a few times for higher pay and a better position. He was a security official with a large company from April 2003 until that company was purchased by another company in April 2008. He lost his position when the new company reorganized. He was unemployed from April 2008 until July 2008 when he was hired as a security official by another defense contractor. He worked for that defense contractor until October 2009 when he left to work for another defense contractor for a higher salary. He was employed by that defense contractor until November 2011 when he again lost his job due to a company buyout and reorganization. He remained unemployed until February 2012 when he was hired by his present defense contractor employer. His present employer is one of the largest defense contractors with large Government contracts. It is extremely unlikely this company would be purchased by another company or down sized causing Applicant to lose his job. Applicant's wife also had a short period of unemployment during this time. Sometimes, Applicant and his wife were unemployed at the same time, and sometimes one was working while the other was unemployed. (Tr. 33-41; GX 1, e-QIP, dated April 8, 2013)

When Applicant left the Army, he rented a house for his family for approximately four years. In 2006, Applicant and his wife purchased a house for \$482,000. They were both employed, making a good income, with good job prospects. They purchased the house at the height of the housing market. They had one mortgage to fund 80% of the sale price, and another for 20% of the sale price. The combined monthly mortgage payments were \$3,600. The mortgages were at a competitive interest rate and Applicant and his wife initially had no financial problems meeting the mortgage payments. However, when Applicant was unemployed from April to July 2008, and November 2011 to February 2012, he was unable to make his mortgage payments resulting in past-due payments on one mortgage as noted in SOR 1.a, and the mortgage debt going to collection on the second mortgage as noted in SOR 1.b. (Tr. 16-18, 33-41)

Applicant contacted the mortgage holders to make payment arrangements or to modify the mortgages. He had difficulty making arrangements because the mortgages were sold to other lenders and Applicant did not always know the company to contact. While the mortgage companies were willing to work with Applicant, they could not change or modify the payments because Applicant was not listed at the time in default of the mortgage. When Applicant regained employment, he started to make the required monthly mortgage payments. He was always behind a few monthly payments because of the periods of unemployment. (Tr. 41-44)

Applicant hired an attorney to assist him to obtain a mortgage modification since he was unable to accomplish that without help. The attorney negotiated with both the holder of the primary mortgage and the holder of the secondary mortgage. Applicant, through his attorney, negotiated a loan modification with the holder of the primary mortgage. He has a new monthly mortgage payment of \$2,279.26 on the primary

mortgage. His first monthly payment to the primary mortgage holder was due on October 1, 2014. Applicant made the first payment in September 2014. (Tr. 44-47; AX A, Attorney Letter and Loan Modification Documents, dated September 15, 2014; See *a/so*, Response to SOR, Attorney letter, dated July 1, 2014; AX G, E-mail, dated October 2, 2014; AX H, Payment Receipt, dated September 26, 2014; AX I, Bank Confirmation)

The attorney is still negotiating a loan modification with the holder of the secondary mortgage. The second mortgage holder agreed to negotiate a loan modification when the primary mortgage was modified. Since the primary mortgage has been modified, the attorney expects to reach agreement with the holder of the secondary mortgage. Initially, the attorney and Applicant anticipate the monthly payments on that mortgage to be about \$1,500. However after the hearing, Applicant learned that the payments being negotiated will be between \$500 and \$700 monthly. This will make his total monthly mortgage payments approximately \$2,700 to \$2,900, which is less than he had been paying on the mortgages and within his ability to pay. (Tr. 63-64; AX F, e-mail, dated October 8, 2014)

Applicant sought credit counseling in June 2014, and entered an agreement to have the credit counselor assist him in resolving derogatory information on his credit reports. The credit counselor has been successful in having some information on Applicant's credit reports corrected. The credit counselor will continue to monitor Applicant's credit and credit reports. (Tr. AX C, Letter, dated September 11, 2014)

Applicant had car insurance with a national car insurance company prior to November 2008. When he went to work with one of his employers, his supervisor advised him of another insurance company that catered to military and former military personnel. He obtained insurance from that company for a better price and received better service. (See, Response to SOR, Automobile Insurance Policy, dated November 8, 2008) He notified his previous insurance company that he was terminating his insurance with it, and he paid the balance of his bill. He never received another bill from the insurance company. The insurance company never contacted him concerning any debt owed. A quarterly charge for car insurance was posted on a credit report from only one of the credit reporting agencies. Applicant and his credit counselor are disputing the debt and are seeking to have it removed from his credit report. Applicant is in active communication with the insurance company concerning the dispute. The insurance company was unable to find any information concerning Applicant in their records. Applicant will continue to pursue the dispute until he gets a definitive response from the insurance company. (Tr. 50-53, 61-63; AX C, Letter with Attachments, dated September 11, 2014; AX E, Letter, dated October 8, 2014)

Applicant's wife purchased a used vehicle in 2006. Applicant cosigned for the car loan. His wife had mechanical problems with the car and eventually she could no longer pay for repairs and continue to pay on the car loan. She voluntarily returned the car to the dealer. Applicant's wife worked with the bank holding the car loan and negotiated a

settlement. Applicant's wife settled and paid the car loan debt in August 2013. Applicant presented a letter from the bank showing the loan was settled and paid. Applicant's latest credit reports do not reflect a delinquent car loan to the bank. (Tr. 18, 53-56; AX B, Payment Letter, dated August 17, 2013; AX A, Credit Report, dated July 3, 2014)

Applicant is current with his bills as reflected in his July 3, 2014 credit report at AX A. He has only one credit card that has a low credit limit that he uses occasionally to assist him in establishing credit. There is no balance owed on the card. He is current with his utility payments, taxes, and car payments. He has health insurance for himself and his wife through his employer. (Tr. 46-49)

Applicant presented a letter of recommendation from his supervisor, the employer's director of security services. Applicant is the corporate security officer for a large and prominent defense contractor. The supervisor reports that Applicant has done a tremendous job improving and upgrading the overall security of the firm. He took over a program with problems. He skillfully and professionally rebuilt, reenergized, and reengineered the program The Defense Security Service (DSS) rated his program as "Commendable" for the last two years. Applicant has earned the respect of the company for his professional and personal efforts. He is a responsible person who is dedicated to the security of the company and the United States. (AX D, Letter, dated September 24, 2014)

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 must be considered 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking 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 the applicant may deliberately or inadvertently fail to 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.

Analysis

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. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s self-responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is at risk and inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

Credit reports and Applicant’s admissions show two mortgage debts for the same house that became delinquent in 2008 and again in late 2011 when Applicant was unemployed. Applicant admits the debts. Credit reports also list a vehicle repossession debt and an insurance debt. The evidence shows a history of a potential inability and

unwillingness to satisfy the debt. Even though Applicant denies two of the debts, the information in the credit reports on all of the debts raises the following Financial Considerations Disqualifying Conditions under AG ¶ 19:

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

I considered the following Financial Considerations Mitigating Conditions under AG ¶ 20:

- (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 problems 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.

These mitigating conditions apply. Applicant's financial problems were caused because Applicant had short periods of unemployment cause by his employers' being bought out or downsized. Applicant is now employed by a large reputable defense contractor so it is unlikely he will be unemployed by downsizing or buyouts. His unemployment affected his ability to meet his mortgage payments. In addition, he purchased his house during the mid-2000 housing financial crisis and it lost value. All of these circumstances were beyond Applicant's control and are unlikely to recur. Applicant acted responsibly by making mortgage loan payments when he was employed and contacting his mortgage holders to reach a mortgage loan modification. He hired an attorney and with her help he was able to reach a loan modification. He has made payments under the modified loan. There is no evidence of irresponsible behavior, poor judgment, or unreliable conduct by Applicant.

Applicant presented sufficient information to establish that he sought and received financial counseling. Applicant's financial counselor is working with him to remove erroneous material from his credit reports and assist him in resolving his debts.

For Applicant to establish that he has initiated a good-faith effort to repay debt, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts in the future is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

While normally promises to continue pay delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner or otherwise acting in a financially responsible way, Applicant's actions to hire an attorney and the successful modification of his primary mortgage are more than a mere promise to pay in the future. Applicant established that he has a plan to pay his mortgage. He has made a payment under the plan. He and his attorney continue to pursue modification of his secondary mortgage. He was advised that once the primary mortgage was modified, the second mortgage can be modified. His payments under both modified mortgages will be within his ability to pay. He also established that the car repossession debt was settled and paid. He continues to actively dispute the remaining insurance debt. He is current with all other bills. The payment of the mortgage loan modification, the payment of the car repossession debt, and the dispute of the insurance debt establishes a "meaningful track record" of debt payment and shows an honest adherence to financial duty and obligation by Applicant.

Applicant has established that he has a reasonable basis to dispute the insurance debt. He decided to change his car insurance company for a better and less expensive policy. He notified his former insurance company that he was terminating the policy and he paid his last premium. He never received correspondence from the company that he owed any debt. The amount merely appeared on one of his credit reports. He requested information through his attorney from the credit reporting agency and the former insurance company. The insurance company cannot provide him with the basic information concerning the insurance since he is not listed in their records. He has a solid basis to dispute the debt and he is aggressively pursuing the dispute.

Applicant has shown that he manages his personal financial obligations reasonably and responsibly, and his responsible financial conduct is likely to continue. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information available to include the information provided by

Applicant, I conclude that Applicant has mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 considered Applicant's 11 years of honorable active duty service in the Army, and that he has been successfully granted eligibility for access to classified information for over 25 years. I considered the opinion of his supervisor that he is a hard worker with honesty, integrity, and devotion to duty.

Applicant presented sufficient information to establish that he acted reasonably and responsibly towards his delinquent debts. His mortgage financial problems were caused by circumstances beyond his control and the circumstances are unlikely to recur. He used an attorney to negotiate a mortgage loan modification and he is paying the mortgage as modified. He continues to work on modifying his second mortgage. He settled and paid a car repossession debt for his wife's car. He has a solid basis and continues to dispute a car insurance debt. As noted, Applicant is not required to be debt-free or pay off all debt immediately. All that is required is that he acted responsibly under the circumstances, develop a reasonable plan to repay the debt, and show a serious intent to effectuate the plan. Applicant has taken reasonable action to resolve his delinquent debts and maintain his financial responsibility. His past financial track record provides confidence that he will continue to resolve the debt and will be ready to make payments on the debt. His responsible management of his financial obligations indicates he will be concerned and act responsibly in regard to classified information. Overall, the record evidence leaves me without questions and doubts as to Applicant's judgment, reliability, trustworthiness, and his eligibility and suitability for a security

clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is granted.

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.d 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.

THOMAS M. CREAN
Administrative Judge