



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-01134
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

06/18/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial and personal conduct security concerns.

Statement of the Case

On June 19, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), 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 August 1, 2014, detailing security concerns for financial considerations under Guideline F and personal conduct under Guideline E. 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).

Applicant answered the SOR on October 19, 2014. He admitted the seven delinquent debts under Guideline F, and the personal conduct allegation under Guideline E. Department Counsel was prepared to proceed on March 19, 2015, and the case was assigned to me on March 25, 2015. A notice of hearing was sent to Applicant on March 27, 2015, scheduling a hearing for April 13, 2015. I convened the hearing as scheduled. The Government offered four exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 4. Applicant testified. He did not submit any exhibits. I kept the record open for Applicant to submit documents. Applicant timely submitted six documents that I marked and admitted into the record as AX A through F. Department Counsel did not object to the admission of the documents. (GX 5, Memorandum, dated May 14, 2015) I received the transcript of the hearing (Tr.) on April 21, 2015.

Findings of Fact

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

Applicant is a 47-year-old computer graphic artist. He has been employed by a defense contractor since June 2013. He received a bachelor's degree in 2005. He married in July 1990, separated in June 2012, and divorced in June 2014. He has no children. He served in the Navy from May 1988 until August 1990, when he was discharged with an other than honorable discharge for misconduct. Applicant's present annual salary is approximately \$48,000. He has a remainder each month of approximately \$1,500 for discretionary spending. (Tr. 10-11, 51-54; GX 1, e-QIP, dated June 19, 2013)

The SOR alleges and a credit report (GX 3, dated June 21, 2013) and Applicant's answer during the personal subject interview (GX 2, dated July 8, 2013, and July 30, 2013) confirm the following delinquent debts for Applicant: a medical debt for \$761 (SOR 1.a); a television service debt for \$118 (SOR 1.b); another medical debt for \$84 (SOR 1.c); a student loan account placed for collection for \$13,698 (SOR 1.d); another student loan account place for collection for \$19,034 (SOR 1.e); a credit card debt place for collection for \$3,692 (SOR 1.f); and an account placed for collection for \$131 (SOR 1.g). The total amount of the delinquent debt is \$37,518, with the student loans accounting for over \$32,500 of that debt.

Applicant was gainfully employed from June 2003 until October 2008, when his employer lost funding for a government contract and he was laid off. At the time, he was working on a government contract for computer-generated instructional programs. He had student loans, a mortgage, car loans, and ordinary debts to pay. He contributed about 60% to 70% of the household income and his wife contributed the other 30% to 40%. They split the bills and each paid some debts. After being laid off, Applicant received unemployment compensation for about six months. He tried everything he could to find meaningful work, but was unsuccessful. He did freelance computer work

but was not well compensated. He was able to meet his financial obligation with his wife's income, unemployment compensation, and his minimal income. (Tr. 16-20)

Applicant has been unemployed for a total of three years in the last seven years. When he determined that he could not find good work in his field where he was located, he moved to live with his grandmother. He believed he could get good, well-paying work in his field at his new location. He was not successful in finding good employment at his new location. He finally received an employment offer from an employer in his original location. He moved back, but the security clearance process took too long and he lost the job before he started. He finally found work with his current employer in June 2013. (Tr. 20-28)

Applicant started to pay his past-due obligations after he became employed in June 2013. He attempted to identify the medical creditor in SOR 1.a, but he was unsuccessful. The creditor is not noted on the credit report. The debt was incurred in August 2011, when Applicant was on his wife's health insurance plan. The only medical treatment Applicant remembers is an emergency room visit for food poisoning. This should have been paid by his wife's health plan. (Tr. 40-44; AX A, Statement, dated May 13, 2015)

Applicant paid the television service debt at SOR 1.b, and the medical debt at SOR 1.c. (Tr. 45; AX E, Bank Statement, dated May 12, 2015) He paid the debt at SOR 1.g. (Tr. 45-46; AX F, Bank Statement, dated May 12, 2015)

Applicant's student loans at SOR 1.d and 1.e have been consolidated and are being paid according to a payment plan. He is current with his payments. (Tr. 47-51; AX B, Letter, dated April 29, 2015; AX Bank Statement, dated May 12, 2015)

Applicant pays, by direct withdrawal from his bank account, \$153.82 each pay period on the credit card debt at SOR 1.f. Applicant is current with his agreed payments. (Tr. 51-52; AX D, Statement, May 20, 2015)

Applicant admitted that he deliberately did not provide any financial information about delinquent debts on his e-QIP. He had been unemployed at the time for so long he was doing all he could to find and obtain employment. He did not want any negative information to affect his employment possibilities. This was the first security clearance application he completed, and he did not fully understand the reasons for financial information. He did not disclose any debts because he did not believe that his debts had any bearing on his work performance and potential for employment. He did not believe the information was relevant on a security clearance application since it was not his fault he was unemployed for so long and could not pay his bills. He did not have anyone to provide him assistance and advice on responding to questions on the e-QIP.

Applicant told the security investigator when asked about the status of his finances, that he did not think the delinquent account should have to be listed. His debts

were beyond his ability to control, so he did not believe they were relevant. He did discuss the status of his delinquent debts with the security investigator.

At the hearing, Applicant admitted that he never sought or received credit counseling. He testified to the reasons he did not including financial information on his security clearance application. He established that he lives within his means, has not accumulate any addition delinquent debt, pays his current bills on time, and has started paying his past-due obligations. Applicant's testimony at the hearing was open, straight-forward, complete, candid, and credible. (Tr. 28-40, 59-61)

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 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 of acting inconsistently with holding 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.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant incurred delinquent debt when he was laid off in 2008, and he and his wife separated in June 2012. He was unable to meet his financial obligations because of his loss of employment and the loss of his wife's income when they separated. Applicant's history of delinquent debts is documented in his credit report, his responses to questions of the OPM investigator, and his SOR response. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security concerns under the Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and (c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy delinquent debt.

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; and

(d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

The mitigating conditions apply. Applicant incurred delinquent debt when he was laid off, could not find good-paying employment, was unemployed for a long period, and he and his wife separated and he lost her income. The circumstances leading to delinquent debt were largely beyond Applicant's control, unique, and unlikely to recur since Applicant is now employed. Applicant has resolved some debts, but he has current debts that he is resolving under payment plans. His payment of some debts and payment plans for others are a clear indication that he is acting responsibly, and the problem is being resolved or under control. While Applicant has not received financial counseling, his financial problems are resolved or under control since his debts are either paid or being paid. AG ¶¶ 20 (a), 20 (b), and 20 (c) apply.

AG 20(d) applies. For a good-faith effort, 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.

Applicant established and implemented a plan to resolve his past-due obligations after finding steady, good-paying employment. Applicant attempted to contact all creditors listed on the SOR. He was unable to find any information on the creditor for the debt at SOR 1.a. He paid three of the debts (SOR 1.b, 1.c, 1.g), and is current with the payments for the three remaining debts (SOR 1.d, 1.e, and 1.f). His present bills are current. Applicant has funds to resolve his remaining debts and has a viable plan to continue to resolve his debts. Applicant has shown that he is managing his personal financial obligations reasonably and responsibly, and his financial problems are behind him. There is ample evidence of responsible behavior, good judgment, and reliability.

Based on all of the financial information, I conclude that Applicant has mitigated security concerns based on financial considerations.

Personal Conduct

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

On his e-QIP, Appellant answered "no" to a series of questions concerning any past delinquent debts. Applicant knew that he had delinquent debt. His failure to reveal the delinquent status of his debts on his security clearance application raises a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(a) (the deliberate omission concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security eligibility or trustworthiness, or award fiduciary responsibilities).

I considered the follow personal conduct mitigating condition under AG ¶ 17;

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment, was caused by or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness , or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken positive steps to alleviate the stressor, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

While there is a security concern for a deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. Applicant admitted he deliberately failed to provide accurate and complete financial information on his security clearance application. However, his failure was the result of his misinterpreting the intent of the financial questions. He did not have a full understanding of the bearing of the financial questions under the circumstances of his long period of unemployment on his suitability for access to classified information. Once the security investigator explained the intent of the financial question to Applicant, he fully discussed the status of his finances. While Applicant's negative responses to financial questions on the security clearance application was deliberate, it was not done knowingly with an intent to deceive. I find Applicant mitigate his deliberate failure to provide correct and accurate financial information on the security clearance application.

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 that Applicant incurred delinquent debt under unique circumstances beyond his control. Applicant paid some of his debts and is paying his other debts under payment plans. Applicant presented sufficient information to establish that he acted reasonably and responsibly towards his

finances. Applicant's payment of delinquent debts and his plans to continue to resolve his remaining debts shows Applicant's responsible management of his finances. Applicant presented sufficient information to establish that he acted reasonably and responsibly towards his finances, and will continue to responsibly manage his financial obligations. This indicates that he will be concerned or act responsibly in regard to classified information. Applicant mitigated the security concern for deliberately providing inaccurate financial information on his security clearance application.

Overall, the record evidence leaves me without questions or doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant mitigated security concerns arising under the financial considerations and personal conduct guidelines.

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.g:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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