



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)
)
) ISCR Case No. 14-01181
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

03/12/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant’s charged-off or in collection accounts alleged in the Statement of Reasons (SOR), totaling approximately \$20,000, and student loans totaling approximately \$47,000, have been included in a debt consolidation plan. The financial considerations security concerns have been resolved. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on June 4, 2014, the DoD issued an SOR detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s

¹ 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 within the DoD on September 1, 2006.

security clearance. On June 30, 2014, Applicant answered the SOR and requested a hearing. On August 28, 2014, I was assigned the case. On October 2, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on October 20, 2014. I admitted Government's Exhibits (Ex) 1 through 3 and Applicant's Exhibits A through I, without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. Additional documents (Ex. J through N) were submitted and admitted into the record without objection. On October 28, 2014, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he denied two debts (SOR 1.f, \$232 and SOR 1.j, \$1,385) and admitted the remaining charged-off or in collection accounts. He indicated his financial difficulties were the result of his father's July 2007 death and his mother-in-law's July 2008 death. In April 2013, his income decreased due to DoD budget cuts when his overtime pay was stopped. (Tr. 44) I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 40-year-old acceptance technician who has worked for a defense contractor since November 2008, and seeks to maintain a secret security clearance. (Tr. 22, 32) Applicant called no witnesses other than himself. He provided his last five performance reports. His supervisors indicate he is extremely hard working, an exceptional technician, is willing to take on more work as required, a great team player, learns quickly, has a wonderful work ethic, and has a "let's get it done attitude." (Ex. H) Applicant's pastor states Applicant is an excellent role model and a person of good moral character. (Ex. J)

Applicant's annual salary is \$43,000. (Tr. 22, 44) He is married and has a 23-year-old daughter. (Tr. 22, 23, 42) In September 2012, Applicant's wife graduated from college with an associate's degree in medical billing and coding. (Tr. 52) His wife is not currently working outside the home, but is seeking employment. (Tr. 22, 41, 56) In addition to Applicant's full-time DoD contractor job, he has a part-time job working 20 to 25 hours weekly for a building supply store. (Ex. I, Tr. 27, 45) In June 2013, he started his part-time job following the loss of overtime pay at his DoD contractor job, which occurred in April 2013. (Tr. 44) He asserts he is getting approximately four hours of sleep a night. (Tr. 27) Before obtaining his current part-time job, he had a five-month part-time job as an overnight grocery stocker. (Tr. 57)

In June 2007, Applicant's father died and in July 2008, his mother-in-law died. (Tr. 11) He was responsible for the funeral expenses, which were approximately \$5,000 each. (Tr. 23, 34) His mother is on disability. Even though he has siblings, the funeral expenses accrued to him. (Tr. 35) In November 2008, he started working full time for his current employer after his mother-in-law's death. (Tr. 31) He maintained contact with his creditors when he began to fall behind on his monthly payments. (Tr.48)

In June 2014, the \$232 collection account (SOR 1.f) was "settled in full." (Ex. F) The \$1,385 collection account (SOR 1.j) has been deleted from Applicant's credit file. (Ex. E) He acknowledged the other collection account (SOR 1.k, \$623) with the same collection agency is his debt. The \$5,108 charged-off account (SOR 1.n) was settled for \$508.88 and payment made on the settlement. (Ex. G)

From 2004 through 2006, Applicant attended school to obtain his associate's degree in computer and electronics engineering technology. (Tr. 36) He incurred \$47,000 in student loans. (Tr. 35) In 2007, he initially fell behind on his monthly payments due to his father's death. (Tr. 37) In 2009 and 2010, he made \$400 payments for five months. (Tr. 40) He stated he is currently making \$100 monthly payments on his student loans. (Tr. 38) He has included his student loans in a debt management program (DMP). (Ex. D, Tr. 38, 42) He asserted he had a letter documenting the amount owed on his student loans. It was suggested he might want to provide that documentation following the hearing. (Tr. 43) No document was received.

In July 2014, Applicant began discussion with the DMP and enrolled with the company in August 2014. (Ex. A, Tr. 47) The DMP was to address approximately \$9,500 of Applicant's \$105,000 of debt. (Ex. A) The program requires him to make \$345 monthly payments to the company starting on September 25, 2014. (Ex. A) Changes to the DMP increased the monthly amount to \$495. (Ex. K) The DMP required a monthly electronic funds transfer on the 25th of each month. (Ex. H, Tr. 49 and 57) He has made the following payments to the DMP company: \$445 (August 26, 2014), \$102 (September 22, 2014), \$345 (October 3, 2014), \$48 (October 17, 2014), and \$460 (October 28, 2014). (Ex. A, N, Tr. 23) The program requires a complete financial assessment and the development of action plans.

All the unaddressed SOR delinquent accounts were included in the DMP. (Ex. A, B) The company receives \$50 monthly for the service it provides. (Tr. 25) He asserted his monthly payments would increase to \$460 with the inclusion of the debt listed in SOR 1.k. (Tr. 25) With the inclusion of the debt in SOR 1.p (\$688), his monthly payment increased to \$495. (Tr. 58) Applicant asserts the \$681 charged-off account in SOR 1.q and the \$688 collection account in SOR 1.p are the same payday loan obligation. (Tr. 59)

Applicant took on-line financial counseling courses from the DMP, from which he learned how to manage and control his finances. (Tr. 60) He asserts he is doing everything he possibly can to resolve his debts. (Tr. 61) He currently has \$1,000 in his checking account. (Tr. 65) He is current on his two car payments, one for \$502 monthly and the other for \$360, on his 2007 and 2011 vehicles. (Tr. 28, 51) He is current on his rent (\$840) and utility bills. (Tr. 27, 50) He has a credit card with a \$200 limit, which he obtained to help him reestablish his credit. (Tr. 28) He has \$13,600 in his company's 401(k) retirement plan. (Ex. L, M, Tr. 29) He is enrolled in 401(k) plans with his DoD contractor job and with his part-time job. (Ex. L, M)

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 interests of 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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. Applicant owed approximately \$20,000 on collection accounts and charged-off accounts and also owed approximately \$47,000 in student loan obligations. At one point, he was behind on his student loan payments and some have been charged off. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five 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;

(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's financial problems commenced with the death of this father in 2007 and continued with the death of his mother-in-law in 2008. In 2013, DoD budget constraints eliminated his overtime pay. When he lost his overtime pay, he obtained a part-time job and maintains a part-time job whereby he works 20 to 25 hours weekly. Some of the delinquent accounts are not recently incurred, but there are multiple accounts that remain unpaid. He has entered into a DMP which includes all of the SOR debt.

Under AG ¶ 20(a), Applicant's financial problems were aggravated by the financial obligations brought on by his father and mother-in-law's deaths. These financial obligations will not recur. When the problems arose and he began to get behind on his payments, he acted reasonably by keeping in contact with his creditors. AG ¶ 20(a) and AG ¶ 20(b) apply.

Applicant has received financial counseling through the DMP and it appears he is getting his delinquent debt under control. He is current on his rent, utility bills, vehicle payments, and his credit card, which has a \$200 limit. AG ¶ 20 (c) applies.

Applicant settled and paid two of the SOR delinquent obligations and all of the remaining obligations, including his student loans, are now part of a DMP. The program requires him to pay \$495 monthly, which is made by a monthly electronic funds transfer on the 25th of each month. He provided documentation showing payments are being made to the DMP. He has received financial classes, maintains a budget, is living within his means, and is paying his currently obligations. He is addressing the SOR debts in the DMP. AG ¶ 20(d) 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 the facts and circumstances surrounding this case. The debts incurred were not the types that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The delinquent debts set forth in the SOR were not incurred on luxuries, the largest debt was for student loans. His duty performance is excellent.

When Applicant's financial problems started, due to the deaths of his father and mother-in-law, he kept his creditors informed. When a cut back at work eliminated his overtime pay, he immediately sought part-time employment. Since early 2013, Applicant has been maintaining two jobs. He works 40 hours on his DoD contractor job and 20 to 25 hours weekly on his part-time job. He does not have much time for anything else, including sleep, which he says is about four hours nightly. A person does not take a second job unless they are serious about addressing past-due, delinquent accounts. He asserted he was doing everything he could to address his debts. His part-time job gives credence to that claim.

An applicant is not required to establish that he has paid off each and every debt listed in the SOR. All that is required is for him to demonstrate he has established a plan to resolve his delinquent debt and has taken significant action to implement that plan. I must reasonably consider the entirety of Applicant's financial situation and his actions in evaluating the extent to which that plan is credible and realistic.

Applicant has included all of the SOR debt in a debt management program and the monthly payment is automatically made. He has made sufficient payments on that agreement that I am confident that the automatic monthly deduction will continue until all of the obligations listed in the plan have been paid. The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2 (a)(1).)

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his 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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1. v: 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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge