



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



In the matter of:)	
)	
)	ISCR Case No. 14-01191
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel

For Applicant: *Pro se*

10/24/2014

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for Financial Considerations. His request for a security clearance is granted.

Statement of the Case

On May 5, 2014, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that cited security concerns under Guideline F (Financial Considerations). This 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; and the Adjudicative Guidelines (AG) implemented by the DOD on September 1, 2006.

In his May 13, 2014 Answer to the SOR, Applicant admitted three SOR allegations, and denied three, with explanations. He also requested a hearing before an

administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on September 26, 2014. At the hearing on October 7, 2014, the Government offered seven exhibits, admitted into evidence as Government Exhibits (GE) 1 through 7. Applicant testified, and offered four exhibits, admitted as Applicant Exhibits (AE) A through D.¹ I held the record open to allow Applicant to submit additional documentation. He timely submitted ten documents, which I admitted as AE E through N. The Government's exhibit list is marked as Hearing Exhibit (HE) I; her cover letter sent to Applicant with the Government's exhibits is marked HE II. DOHA received the transcript (Tr.) on October 16, 2014.

Procedural Matters

Under the Directive, §E3.1.8, applicants are entitled to 15 days' notice of the hearing date. On September 24, 2014, Department Counsel spoke with Applicant and he indicated he was available on the hearing date. On September 25, 2014, Department Counsel informed Applicant of his right to 15 days' notice, and he stated he wished to go forward with the hearing date, although it was less than 15 days before the hearing. Applicant received an emailed Notice of Hearing on September 26, 2014, and the mailed Notice on September 30, 2014. At the hearing, Applicant affirmatively waived his right to 15 days' notice on the record. (Tr. 8-10)

Findings of Fact

After reviewing the pleadings and the record evidence, I make the following additional findings of fact.

Applicant is a 40-year-old college graduate. He completed a bachelor of science degree in 1998. He has been married since 1999, and has one 13-year-old son. He was first granted a security clearance in 1998 and has worked for federal contractors since. He was employed with the same defense contractor as a senior electrical engineer from 2000 to 2013. In 2013, Applicant's security clearance required an update, but his company began to downsize, and security clearance investigations were not initiated. He became unemployed in March 2014. Late in 2014, he found employment, but could not start until he received his security clearance.² (GE 1, 3; Tr. 23-29)

In 2000, when Applicant was in his 20's, he filed a Chapter 7 bankruptcy petition (SOR allegation 1.f). He testified it was primarily because of his college expenses. It was successfully discharged in January 2001. In 2006, Applicant's wife was diagnosed with Asberger's syndrome, a type of high-functioning autism. She stopped working, but

¹ Applicant submitted four documents with his Answer to the SOR. For administrative convenience, I severed them from the Answer, and admitted them as Applicant exhibits. (Tr. 19)

² Applicant testified that he is sponsored by a defense contractor, and will begin employment upon receipt of his security clearance. He provided a November 13, 2013 letter from his sponsor confirming his status. (GE 3; AE E; Tr. 23-25)

began graduate studies, and completed two graduate degrees. In 2010, she started a day care business from her home. However, in summer 2012, she became ill and was forced to close the business. In November 2012, she was diagnosed with lung cancer. Applicant provided documentation showing her treatments in 2012 and 2013. In August 2013, she was able to return to work. She is currently a counselor, working with children with autism. Her treatment for lung cancer is ongoing. (GE 4-7; AE A, L, M; Tr. 45-49, 52)

Applicant has been unemployed since March 2014. He received \$378 per week in unemployment compensation for 26 weeks. In 2013, Applicant's annual gross income before he was laid off was \$113,000. Since 2013, his wife has been earning approximately \$36,000 in gross annual income. Applicant's wife had financial counseling through a private counseling firm, and they keep a family budget. Applicant sought assistance with his mortgage payment through the Home Affordable Unemployment Program. His lender has temporarily reduced his payment to \$507 per month, based on his unemployed status. His mortgage loan is current. He has about \$12,000 in student loans, and had been using savings to make the \$150 per month payment. Starting in June 2014, he was granted a deferment on payments because of his unemployment. Applicant's wife has no credit cards, and Applicant has one. It has no balance, because he pays it in total each month. Applicant's November 2013 credit report shows numerous accounts are in "pays as agreed" status and consistent records of payment. (GE 2; AE F, G, H, I, K; Tr. 24, 30-33, 48-49, 52-53, 60)

Applicant's three delinquent debts, as listed in the SOR, total \$15,096. However, the debts at allegations 1.c and 1.d are duplicates. Excluding the duplicate allegation (1.c), the adjusted delinquent total is \$13,096. When the resolved debts are deducted, the remaining delinquency is the \$10,425 automobile loan (allegation 1.e). The debts appear in Applicant's credit reports from October 1998 and November 2013. (GE 2, 5) The status of Applicant's SOR debts follows.

1.a, \$66 – RESOLVED. At his December 2013 security interview, Applicant stated he was unaware of this account. He testified that he believes this debt reflects a returned check his wife issued to a mail delivery service. Applicant contacted that creditor that appears in allegation 1.a, to pay the debt. However, the debt did not appear in its records, and the company could not provide relevant documentation. In his Answer, Applicant said the creditor's representative stated he would instruct the credit reporting agency to delete it from Applicant's credit report. (Answer; GE 2, 3; Tr. 33-36)

1.b, \$337 – PAID. Applicant was unaware of this debt for a returned check, issued by his wife. He contacted the law office handling the account, to pay it, but was informed that it had already been paid. He requested documentation, and provided the resulting letter. (GE 2; AE B; Tr. 36-38)

1.c/1.d, \$2,268 – PAID. The two debts (1.c, \$2,000; 1.d, \$2,268) reference a charge account with an online retailer.³ Applicant testified that the debts are duplicates of the same debt, sold to successive creditors. He provided a letter from the current creditor, a collection agency. It states that on December 20, 2012, the debt was sold and transferred from the original creditor, the retailer listed in SOR allegation 1.c, to the collection agency shown in SOR allegation 1.d. Applicant's documentation also shows, through the account numbers, that they are the same debt. When Applicant was laid off in early 2014, he used funds received for unused vacation time and made two payments to the current creditor, paying the outstanding balance in full. (GE 3; AE C; Tr. 38-43)

1.e, \$10,425 – PAYMENT PLAN. In 2010, Applicant's wife purchased a van for \$10,000 to use as part of a day care business that she operated from their home. Applicant co-signed on the loan. The monthly payments were \$500. When she became ill in 2012 and could no longer run the business, she ceased operations, and voluntarily returned the van. Applicant's wife contacted the creditor monthly, but with no response. However, in September 2014, the company contacted her, agreeing to a payment plan. Applicant provided documentation showing a plan for \$300 monthly payments. His wife will make the payments, until he is employed. (GE 2, 3; AE A, J; Tr. 43-46, 49-51)

Applicant submitted his 2013 performance evaluation, which shows that he was rated 3 (achieved goal), 4 (surpassed goal), or 5 (exceptional) in all categories. His raters described him as conscientious, and an excellent communicator. He assists his team workers and is flexible in responding to customer needs. He has demonstrated trustworthiness in his position, as well as a balanced and mature outlook. (AE N)

Policies

Each security clearance decision must be an impartial, commonsense determination based on examination of available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁴ Decisions must also reflect consideration of the "whole-person" factors listed in ¶ 2(a) of the guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F (Financial Considerations).

³ Applicant testified that his name was on his wife's account but his November 2013 credit report shows it as an individual account. (GE 2)

⁴ Directive. 6.3.

A security clearance decision is issued only to resolve the question of whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to the Applicant to refute, extenuate, or mitigate the Government's case. Because no one has a "right" to a security clearance, applicants bear a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁷

Analysis

Guideline F (Financial Considerations)

AG ¶ 18 expresses the security concern about 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. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. . .

Applicant was able to support his family on his sole income after his wife was diagnosed with a disorder in 2006 and was unemployed. However, when she was diagnosed with cancer in 2012, the two large debts in the SOR became delinquent. The record supports application of the following disqualifying conditions under AG ¶ 19:

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

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

I have considered the mitigating factors under AG ¶ 20, especially the following:

(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.

Applicant's debts are infrequent because the SOR lists four debts, and Applicant's credit report shows many accounts with a history of timely payment. He has paid three of the four SOR debts. With a substantial salary from his new job, it is unlikely delinquencies will recur. Applicant's current reliability and judgment are not in doubt. AG ¶ 20(a) applies.

AG ¶ 20(b) concerns situations where applicants' debts become delinquent because of conditions that are beyond their control. Here, Applicant's financial problems stemmed in part from having only one family income, after his wife's was diagnosed with a health condition. She tried to generate income through a day-care business, and purchased a van for the business, which represents the largest SOR debt. However, she was forced to close the business following a diagnosis of lung cancer. She remained unemployed for more than one year. In 2013, Applicant's company began to downsize, and he could not obtain a security clearance investigation. He was laid off. His wife earned a small income, and was the family's sole support while Applicant was unemployed. They had little income to resolve the two primary SOR debts. Applicant has acted responsibly during these financial hardships. He sought and received a decrease on his mortgage loan, and a deferment on his student loans. He used his vacation payment to resolve the debt to the online retailer. Only one debt remains, and he has a payment plan in place. AG ¶ 20(b) applies.

Applicant's wife received financial counseling from a private firm, which helped them develop a family budget. Applicant has made good-faith efforts regarding his four delinquencies. He has paid three of the four debts in the SOR. Applicant's wife was in frequent contact with the creditor for the remaining debt to try to set up a payment plan.

When the creditor finally responded, Applicant took action and set up a payment plan. Based on his history of resolving his debts, I conclude that Applicant's financial situation is under control. AG ¶¶ 20(c) and (d) apply.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the 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.

AG ¶ 2(c) requires that 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. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant is a mature and educated husband and father. He has provided service to the DOD for more than 10 years, and received laudatory comments from his supervisors. He was the sole support of his family for several years. However, he lost his job, and his wife became ill. He acted reasonably by seeking forbearance or deferment on large financial obligations such as his mortgage and student loans. Most of the accounts in his credit report are in "pays as agreed" status. However, four debts became delinquent.

Applicant's wife sought financial counseling, which helped them create a budget. Applicant has made substantial progress on the four SOR debts. He used a vacation leave payment to resolve one of them. He paid off two others, and one remains unpaid. He has established a payment plan for that debt. I conclude, based on his track record, that he will continue to resolve the remaining debt. An applicant is not required to establish that he has paid off every debt listed in the SOR. He must only show, as Applicant has, that he has a plan to resolve his debts and has taken action to implement it.⁸

⁸ See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

