



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



In the matter of:)	
)	
)	ISCR Case No. 14-01299
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

01/22/2015

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concern. Eligibility for access to classified information is granted.

Statement of the Case

On June 27, 2014, the Department of Defense Consolidated Adjudication Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (EO) 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on July 22, 2014, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on November 12, 2014. The FORM was mailed to Applicant

who received it on November 25, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted exhibits (AE) A through D, which were admitted into the record without objection. The case was assigned to me on January 6, 2015.

Procedural Issue

Department Counsel moved to amend the SOR by withdrawing SOR ¶¶ 1.b, 1.g, 1.h, 2.a – 2.c, and 3.a. The motion is granted and the SOR is so amended. Despite the amendment, the original SOR paragraph numbers will be used in this decision.

Findings of Fact

In Applicant's answer to the SOR, he denied all the allegations, except for his admission to ¶ 1.c. That admission is adopted as a finding of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 58 years old. He is separated from his current wife and has been divorced twice. He has one child, age nine and one step-child, age 18. He has worked for his current employer, a defense contractor, since October 2007. He is a high school graduate. He served on active duty in the Air Force from 1974 to 1977 and received a general discharge under honorable conditions.¹

The SOR lists a judgment and four delinquent debts that total approximately \$43,343. These debts are supported by credit reports from December 2012 and March 2014.²

Applicant's financial difficulties began in 2006 when he made a career change by becoming a real estate agent. When his new career did not take off as he expected, he began using credit cards to fund his expenses. Quickly, the debts increased, and he was unable to keep up with the payments on the credit cards. His wife also changed from a full-time job to a part-time position. In 2007, when Applicant was hired for his current job, he was slowly able to pay the judgment and debts he had accumulated. The status of the debts is as follows:³

¹ Items 2-3.

² Items 1, 4-5.

³ Item 2; AE A.

SOR ¶ 1.a:

This is a delinquent credit card debt in the amount of \$14,463. Applicant presented documentation showing his wages were garnished during 2013 and 2014 to pay this debt and satisfy the judgment. This debt is resolved.⁴

SOR ¶ 1.c:

This is a delinquent credit card debt in the amount of \$13,225. This account was sold to a collection agency. Applicant contacted an attorney who advised him that this debt was beyond the statute of limitations and not enforceable. It does not appear on Applicant's credit report from August 2014. This debt is resolved.⁵

SOR ¶ 1.d:

This is a delinquent consumer debt in the amount of \$544.76. Applicant presented documentation showing that he paid the debt in May 2013. This debt is resolved.⁶

SOR ¶ 1.e:

This is a delinquent credit card debt in the amount of \$3,596. Applicant presented documentation showing he arranged a settlement of this debt by making monthly payments of \$275 per month from June 2012 until May 2013. This debt is resolved.⁷

SOR ¶ 1.f:

This is a delinquent credit card debt in the amount of \$11,515. Applicant presented documentation showing his wages were garnished during 2010 and 2011 to pay this debt and satisfy the judgment. This debt is resolved.⁸

Applicant's answer to the SOR included several years' worth of job appraisals and performance awards from 2008 through 2014. He consistently receives ratings of "meets job requirements" and "exceeds job requirement." He has also received performance awards ranging up to \$1,000.⁹

⁴ Items 2 (p. 4-6), 6.

⁵ Item 2, AE A, C.

⁶ Item 2 (p. 7-8).

⁷ Item 2 (p. 9-20).

⁸ Items 2 (p. 25-27), 7.

⁹ Item 2 (p. 21-24, 28-56).

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 are used 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

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

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for 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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant accumulated delinquent debts over an extended period of time. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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.

The delinquent debts attributed to Applicant were recent. He has paid four debts and determined that the remaining debt is not enforceable and is not listed on his credit report. His efforts to repair his financial position make it reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant accumulated delinquent debt when he made a career change that reduced his earnings. After a year of accumulating debt, he was hired in his current position. His decision to change careers was not a condition beyond his control. AG ¶ 20(b) does not apply.

There are clear indications that all but one of the debts have been resolved through payment. Applicant made good-faith efforts to resolve most the debts listed on the SOR. Even though two of the debts were resolved because of garnishment actions, they took place well before the issuance of the SOR and can be compared to required payments under a Chapter 13 bankruptcy plan. He supplied documentary evidence showing the payments were made and the debts were paid. AG ¶ 20(c) and ¶ 20(d) apply.

He did not address the one debt listed in the SOR that is unenforceable, however, a security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). There is also no requirement that an applicant pay every debt listed in the SOR, only that he remove concerns about his reliability and trustworthiness raised by those debts. See ISCR Case No. 14-00504 at 3 (App. Bd. August 4, 2014). Applicant has taken significant action to resolve his debts.

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 the 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 guideline 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 past military service and his civilian service, including his job appraisals and performance awards. The evidence supports his showing that he is again financially stable. He paid four of the debts and determined the last debt is unenforceable. The record contains sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, 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, Guideline F: ¹⁰	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.c – 1.f:	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.

Robert E. Coacher
Administrative Judge

¹⁰ SOR ¶¶ 1.b, 1.g, 1.h, 2.a, 2.b, and 3.a were withdrawn.