



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



In the matter of:)	
)	
)	ISCR Case No. 14-01813
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

07/16/2015

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s good-faith efforts to satisfy his delinquent debts are sufficient to mitigate the security concerns. Clearance is granted.

Statement of the Case

On December 8, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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) implemented by the DOD on September 1, 2006.

On January 2, 2015, Applicant answered the SOR, admitting the allegations and requesting a hearing; whereupon the case was assigned to me on April 2, 2015. The Department of Defense Office of Hearings and Appeals (DOHA) issued a notice of

hearing on April 14, 2015, scheduling the hearing for May 13, 2015. The hearing was held as scheduled. At the hearing, I received three Government exhibits (GEs 1 through 3), and three Applicant exhibits (AEs A through C), together with Applicant's testimony. At the close of the hearing, I left the record open to allow Applicant the opportunity to submit additional exhibits. Within the time allotted, he submitted an additional exhibit that I incorporated into the record as AE D. DOHA received the transcript (Tr.) on May 20, 2015.

Findings of Fact

Applicant is a 43-year-old single man. He is a high school graduate. For the past 12 years, Applicant has held various janitorial jobs. Since 2013, he has worked as a janitor on a military base. (Tr. 14) Applicant has taken some online trade school courses to learn medical billing, in an attempt "to better [him]self," but stopped, as the course load became increasingly challenging and conflicted with his work schedule. (Tr. 21)

In June 2012, Applicant was fired after being accused of sexually harassing a coworker. (Tr. 24) Unable to make ends meet, he subsequently became homeless. (AE 1 at 8) He lived in a homeless shelter for approximately a year until May 2013, when he obtained his current job. (GE 1 at 7) Currently, he lives in transitional housing and is working with a social worker to find a long-term rental unit. (Tr. 17) His monthly rent payments total \$528 per month. (Tr. 19)

While unemployed, Applicant's student loan debts became delinquent (SOR subparagraphs 1.a through 1.c, and 1.g). Also, Applicant fell behind on bills owed to a car leasing company (SOR subparagraph 1.d), a credit card company (SOR subparagraph 1.f), a cell phone company (SOR subparagraph 1.h), and a collection agent for a medical account (SOR subparagraph 1.i).

Applicant's student loan accounts collectively total \$20,000, which include approximately \$4,000 in penalties and fees. (AE A; Tr. 22-23) On April 27, 2015, Applicant arranged to repay the student loan debt through \$173 monthly payments. By June 1, 2015, Applicant had made his first \$173 payment through twice-monthly increments of \$86.50. (AE D at 4,7)

Applicant contacted the creditor listed in subparagraph 1.d in April 2015. He agreed to pay the \$2,943 balance in \$30 twice-monthly payments. (AE C) As of June 2015, he has been paying this creditor, as agreed. (AE D at 4,7)

The debt listed in subparagraph 1.d, totalling \$600, has been assigned to another creditor. (AE B) On May 2, 2015, Applicant arranged to pay this debt through twice-monthly automatic drafts totalling \$50. (AE B) As of June 2015, he has been making payments, as scheduled. (AE D at 4,7)

Applicant has not yet contacted the creditors listed in subparagraphs 1.h and 1.i. These debts total approximately \$1,000. Applicant earns approximately \$17,500 per

year. (Tr. 20) He lives “paycheck to paycheck,” and cannot afford to make payments on these debts with what he is already committed to paying. (Tr. 20, 26)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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) Between 2012 and 2013, Applicant fell behind on his debts totalling more than \$20,000. These debts remain outstanding. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Applicant’s financial problems were caused by the loss of his job. However, he was not laid off; he was fired for cause. Consequently, the circumstances surrounding the financial problems were not beyond his control. Nevertheless, Applicant has been taking steps to improve his situation, working with a social worker to find stable, long-term housing, contacting creditors, arranging payment plans, and making payments according to terms acceptable to his creditors.

Relative to the balance of the debts, Applicant’s payments are small. Moreover, Applicant just started making payments within the past two months. Conversely, he is paying what he can afford, and his efforts appear to be well-organized. I conclude that

AG ¶¶ 20(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 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Applicant’s financial problems did not occur as a result of profligate spending. Moreover, although his progress to rectify his delinquencies has been minimal in comparison to the amount of debt that he has incurred, he is doing the best that he can, given his limited financial means. Under these circumstances, I conclude that Applicant has mitigated the financial considerations security concerns.

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.i:	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.

MARC E. CURRY
Administrative Judge

