



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



In the matter of:)
)
) ISCR Case No. 14-01899
)
Applicant for Security Clearance)

Appearances

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

11/15/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On February 17, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

On March 30, 2015, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. On June 24, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was

mailed to Applicant, and it was received on July 15, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence and Items 5 through 8 are admitted into evidence. Applicant provided additional documents that are marked Items A through N, which are admitted into evidence without objection. The case was assigned to me on October 14, 2015.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.g and denied the remaining allegations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 50 years old. He is a college graduate. Applicant married in 1996 and has a ten-year-old child.¹ He was employed in the past as a government subcontractor. In 2013, he became an employee of a government contractor.²

Applicant owned a commercial property and operated a retail business on that property beginning in approximately 1997. His wife managed the business. He worked there on the weekends and helped with its maintenance. He continued to work full time at his primary job. He paid all of his creditors on time. Due to an economic downturn over a period of years, the business became unprofitable, and in September 2013 the property was placed on the market for sale. The business closed its doors in December 2013.³

Applicant hired an attorney in June 2014 to assist him in resolving the debts associated with the business. After reviewing Applicant's financial situation and various alternatives for addressing his debts, on his attorney's advice, he decided not to file bankruptcy, but rather seek to pay and settle the debts through a payment strategy devised by his attorney. Based on his attorney's advice, he changed realtors and more aggressively priced the property to achieve a quicker sale.⁴

The property sold in September 2014. The year that the property was on the market, it did not produce income, and it was a challenge for Applicant to pay the monthly mortgage of \$5,600 from his personal account to avoid foreclosure on the property. He was unable to maintain payments on other accounts at that time. When the property sold, it was for less than was required to pay all of his debts. Applicant used the proceeds of the sale to pay the existing mortgages, taxes, and other closing costs,

¹ Item 5.

² Items 5, B, and M.

³ Items 4, 6, A, B, D, and N.

⁴ Items 4, 6, A, B, D, and N.

along with various other accounts and expenses. Applicant satisfied the business debts alleged in SOR ¶¶ 1.h through 1.o that totaled approximately \$18,873. He also satisfied other debts that were not alleged in the SOR.⁵

With respect to the remaining debts, Applicant's attorney advised him to refer all creditor communication to him so he could attempt to negotiate or otherwise resolve the remaining debts. As part of the strategy, Applicant and his family also agreed to live within their means and remain current on their ongoing financial obligations. Since employing the strategy, Applicant has settled and paid the credit card debt in SOR ¶ 1.a (balance \$15,848, settled \$4,755).⁶

Applicant's attorney provided a sworn affidavit, noting that in his experience, the strategy employed to resolve the debts takes time and it is not unusual to still be resolving debts for more than a year. He noted Applicant and his wife have accumulated \$32,000 in savings, together with a portion of Applicant's future wages, available to resolve the debts. His attorney is optimistic that the debts can be resolved without the need to file bankruptcy.⁷

Applicant's attorney is working with all of the remaining creditors to resolve the debts alleged in the SOR that total approximately \$74,200 (SOR ¶1.b through ¶1.g). Applicant's annual salary is approximately \$152,000. He saves approximately \$1,500 monthly. He takes full responsibility for the unpaid accounts. He has revised his budget to minimize expenses, which allows him to increase the debt-resolution fund created for repayment of his debts. He is selling furniture and inventory items from his former business. His wife, who previously had managed the business, is seeking traditional employment while starting a side business to sell food items. He intends on resolving all of the remaining debts.⁸

Applicant provided character statements. In them, he is described as trustworthy, honest, reliable, professional, honorable, and dependable. He is a valued asset and exercises good judgment.⁹

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

⁵ Item 4 at 2-28; Items A, B, D, and N. Along with Applicant's admissions, the alleged debts are supported by credit reports in Items 7 and 8.

⁶ Item 4 at 2-28; Item C.

⁷ Items B, D and N.

⁸ Items B, D and N.

⁹ Items E through M.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 as to 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

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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 the following under AG ¶ 19:

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

Applicant had 15 delinquent debts totaling approximately \$108,921 that he was unable or unwilling to satisfy. The above disqualifying conditions have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following 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 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 denied the debts alleged in SOR ¶¶ 1.h through 1.o because he provided proof that he paid the debts. He admitted the debts in SOR ¶ 1.a through 1.g.

He provided proof he resolved the debt in SOR ¶ 1.a. Applicant provided sufficient evidence to conclude that the debts alleged in the SOR were due to the results of an economic downturn in the business market that impacted his retail business. That event was beyond his control. For the full application of AG ¶ 20(b), he must have acted responsibly under the circumstances. Applicant put the property on the market for sale in September 2013. He continued to pay the mortgage on the property from his personal account because the business was not generating income. This caused him to fall behind on other debts. When the property failed to sell, he hired an attorney who helped him develop a strategy to sell the property and resolve his debts. Applicant changed realtors and aggressively priced the property to sell. Upon the sale, many debts associated with the business were paid. He was advised to live within his means and accumulate savings in a debt resolution account that would then be used by his attorney to negotiate payments of the remaining debts. He has been following this plan. Applicant intends to resolve the remaining debts through this plan. Applicant has acted responsibly under the circumstances. AG ¶ 20(b) applies. AG ¶ 20(a) only partially applies because the remaining debts are current and unresolved, but occurred under circumstances that are unlikely to recur.

Applicant sought financial counseling through his attorney and has a strategic plan for resolving the remaining debts. He paid eight debts and settled one. He is accumulating funds in a debt-resolution account so his attorney can assist him in resolving the remaining six debts. There are clear indications that Applicant is resolving his debts and his finances are under control. AG ¶ 20(c) applies. Applicant paid the debts in SOR ¶¶ 1.h through 1.o, and settled the debt in ¶ 1.a, demonstrating a good-faith effort to resolve his debts. AG ¶ 20(d) applies to those debts. Applicant did not dispute any of the debts alleged. AG ¶ 20(e) is not applicable.

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 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 50 years old. Due to an economic downturn he accumulated debts associated with a retail business. He chose not to file bankruptcy, but rather chose to see the assistance of his attorney to develop a strategy to resolve his debts. He has already resolved nine of the fifteen debts alleged. He is accumulating funds in a debt-resolution account so his attorney can negotiate with the remaining creditors to resolve the debts. He is not required to have paid each debt, but rather only needs to demonstrate he has an established plan and has taken significant action to implement the plan. Applicant has done this. His plan is both credible and realistic. Other than the debts associated with his business, it does not appear he has a history of financial instability. Applicant did not ignore or avoid his financial responsibilities, but rather sought assistance and chose to address his debts in a responsible, systematic manner. I am confident that he will continue his plan to resolve all of his remaining debts. The record evidence does not leave me with 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:	FOR APPLICANT
Subparagraphs 1.a-1.o:	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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge