



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



In the matter of:)
)
-----) ISCR Case No. 14-02073
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

12/03/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated security concerns related to Guideline F. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On July 11, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued 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; 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.

In a July 28, 2014, response, Applicant admitted all 11 allegations raised in the SOR and requested a decision without hearing. On October 15, 2014, counsel for DOD prepared a File of Relevant Material (FORM) containing six attachments to support the Government’s position in this matter. Applicant timely submitted a letter with five attachments in response to the FORM. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on November 21, 2014. I have thoroughly reviewed

the FORM and other case file materials. Based on the materials submitted, I find that Applicant met his burden in mitigating financial considerations security concerns. Clearance is granted.

Findings of Fact

Applicant is a 51-year-old gear issue specialist who has worked for his present employer since December 2013. Before that, he worked as a plumber for a decade. During that time, he endured layoffs from June 2009 to January 2010 and from May 2010 until May 2013. In 2010, he was medically advised to find a different career due to the toll his plumbing work was taking on his knees, worsening an already severe case of osteoarthritis. In May 2013, he took a significantly lower-paying job that required a considerable commute in order to generate an income. He left that position when offered a higher salary at his current post. He was honorably discharged from the United State military in 2002 after 20 years of service. He is married and has three grown children. The October 2014 SOR alleges Appellant has 11 delinquent debts (1.a-1.k) amounting to nearly \$22,300.

In his response to the SOR, Applicant provided evidence that he has satisfied the debts noted at SOR 1.a (\$1,430 tax lien) and 1.e (\$6,343 balance reflected on 1099-C Form). He wrote that he also satisfied the debts at 1.b (\$249) and i.h (\$292), but no documentary evidence of their satisfaction was attached. The debts at issue all seem to have been created during, or became delinquent after, Applicant's periods of unemployment or underemployment. Applicant wrote that he maintained contact with his creditors. There is no evidence that Appellant has received financial counseling. At the time the FORM was issued, following a Government review of Applicant's materials, the Government estimated Applicant owed a little less than \$15,000. This sum was calculated by adding the sum of the debts noted at SOR 1.c, 1.d, 1.f, 1.g, 1.i, 1.j, and 1.k, debts he had not directly addressed in his SOR answer.

In response to the FORM, Applicant provided medical evidence showing his need to seek a new form of employment in 2010, and helping to link his periods of unemployment and health issues with his debts. He also provided notes tending to indicate that he paid the debt at 1.b in August 2014, although no actual receipt was submitted. He provided evidence that the debt for \$292 at 1.h was paid, and that the collection actions against him noted in 1.g and 1.i for \$1,233 and \$2,251, respectively, had been closed after dispute, absolving him of these two obligations.

The balance owed for the remaining debts, noted at SOR allegations 1.c, 1.d, 1.f, 1.j, and 1.k, amount to about \$11,000, a substantially lower sum than originally reflected in the SOR. Applicant stresses that he only returned to work in May 2013, following a protracted period of unemployment and a notable period of underemployment. The progress he has made has been completed in the 10 months since starting his current job and returning to a sustainable wage. In that time, he has paid or successfully disputed 6 of the 11 debts at issue, reducing the total sum of the originally alleged debt by over half. His plan since returning to his past level of income has been to halt the

further acquisition of debt, maintain a workable budget, and devote all spare funds to debt repayment.

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 the applicant may deliberately or inadvertently fail to safeguard 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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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.

Here, the Government introduced credible evidence showing Applicant had multiple delinquent debts amounting to about \$22,300. This is sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate the finance-related security concerns in this case:

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;

AG ¶ 20(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;

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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

Although Applicant has not received financial counseling, he did acquire much of the debt at issue as the result of conditions beyond his control, such as periods of unemployment and underemployment, as well as poor physical health. During this time, he responsibly maintained contact with his creditors. He has been back to work for

about 10 months, earning a salary close to his former level of income. In that time, he demonstrated good faith and responsibly reduced both the sum of his debt and the number of debts by over half. He has not acquired more debt. He is living within his means and making significant progress on his obligations. He successfully disputed two of the debts at issue. Moreover, he is now in a less physically strenuous field, which should increase his likelihood of continued, uninterrupted employment. Given these circumstances and facts, AG ¶ 20(a) - AG ¶ 20(d) apply. In addition, AG ¶ 20(e) applies with regard to the two disputed 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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 limited facts and circumstances noted in this case. I incorporate my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, others may have warranted additional comment.

Applicant is a 51-year-old former plumber whose advanced osteoarthritis forced him to transition to another line of work during a protracted period of unemployment. Debts were acquired while he was unemployed, then underemployed. Less than a year ago, he found his present job, which has a salary range close to his previous salary as a plumbing professional. In that time, he has devised a workable budget, continued to work with his creditors, and reduced both the total sum of his delinquent debt and the actual number of delinquent debts by over half. He has budgeted to continue to satisfy his debts and is committed to doing so.

This process does not require that an applicant satisfy all delinquent debts, only that he have a workable plan for addressing his debts, and documented evidence of successful implementation of that plan. Tracing his progress from SOR to FORM to his response to the FORM shows that his total debt situation has been improved considerably. There is no reason to suspect that he will not continue to make similar progress on his debts until they are all satisfied. I find that Applicant mitigated 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.k:

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.

Arthur E. Marshall, Jr.
Administrative Judge