



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



In the matter of:

)	ISCR Case No. 14-03173
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

08/13/2015

Decision

CREAN, Thomas M., Administrative Judge:

Applicant provided adequate documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is granted.

Statement of the Case

On February 28, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on April 29, 2013. (Item 6) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On September 24, 2014, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in the DOD on September 1, 2006.

Applicant answered the SOR on October 27, 2014. He admitted the four allegations of delinquent debt with explanation and provided documents concerning two of the debts. He elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on June 25, 2015. Applicant received a complete file of relevant material (FORM) on July 17, 2015, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely responded to the FORM providing additional information on the status of his finances. I was assigned to case on August 4, 2015.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview with an OPM agent (Item 6) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the summary. Applicant responded to the FORM and did not raise any objection to consideration of the information in the Personal Subject Interview. Any objection to the information is waived. I will consider information in the Personal Subject Interview in my decision.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 49 years old. He received a bachelor's degree in 1994 and has been employed as a senior analyst by a defense contractor since 2011. He previously held a security clearance while employed by another defense contractor. He has not served in the military. He was married from September 1986 until April 2007. He married again in November 2009. He has three of his own children and one step child. He provides child support for one of his three children. He has held a security clearance since 2004. He was unemployed from October 2009 until December 2009 when he moved from a different location, and from March 2010 until April 2011 when he was unable to work because of a job-related injury. There is no information to determine if he received worker's compensation or unemployment compensation when unemployed or injured. (Item 3, e-QIP, dated February 28, 2013; Item 6, Personal Subject Interview, dated April 29, 2013)

The SOR lists, and credit reports (Item 4, dated March 21, 2013, and Item 5, dated April 9, 2014) confirm the following delinquent debts for Applicant: a credit card debt in collection for \$8,765 (SOR 1.a); a medical debt in collection for \$1,337 (SOR 1.b); a medical debt in collection to the same creditor for \$146 (SOR 1.c); and a debt 120 past due for \$1,361 (SOR 1.d).

Applicant informed the OPM investigator that his delinquent debts were a result of the two periods of unemployment, October 2009 to December 2009, and March 2010 until April 2011, and his divorce in 2007. In the divorce, he was required to pay child support for the youngest child only, but no alimony. He was unable to continue to pay all of his debts with only his salary. He was unsure in the interview of the status of all of his debts. He told the investigator that he would investigate his finances using an updated credit report and start to resolve his debts. Eight debts were noted by the investigator. The four debts listed in the SOR were included in these eight debts. (Item 6 at 4)

In his response to the FORM, Applicant provided documentary evidence that the bank debt at SOR 1.a was settled and resolved. (Response to SOR, Letter, dated July 22, 2014) Applicant also noted that the two medical debts at SOR 1.b and 1.c were settled and paid. He did not have documentation from the creditor to show that the medical debts were settled and paid. However, he provided the name of the company that settled the medical debt and a confirmation number for the settlement. Applicant has a payment plan for the fourth debt, a student loan, at SOR 1.d. He provided his account statement showing that he has been making at least the agreed \$50 monthly payment since August 2013. (Response to SOR, Statement, dated October 27, 2014)

In response to the FORM, Applicant again reiterated that he has held a security clearance for over 15 years and is not a security threat. He had a difficult time over eight years ago when he divorced, and was unable to work for over a year because of a back injury. He is now better financially with a good job. He works hard to pay his bills. (Response to FORM, undated)

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 disqualifying conditions and mitigating conditions, which must be considered 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, 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.

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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

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, thereby raising 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant's has a history of delinquent debts as documented in his credit reports and by his admissions to the OPM investigator and his responses to the allegations in the SOR. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises an inability, and not an unwillingness, to pay delinquent debt.

I considered the following Financial Consideration 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 problems 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 has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

The mitigating conditions apply. Applicant incurred delinquent debt as a result of conditions beyond his control, a divorce and unemployment for over a year because of an injury. These circumstances did not permit him to pay all of his debts as agreed. He is now in a stable job and has remarried. Under these circumstances, it is unlikely that he will incur additional delinquent debt. Applicant acted responsibly under the circumstances. He informed the OPM investigator that he would research his debts and resolve them. Shortly thereafter, he initiated a good-faith effort to pay his overdue creditors. He settled and paid three of the debts. Even though he was unable to provide direct documentation that the two medical debts were settled and paid, he did provide the name of the company that settled the debts and a confirmation number. Applicant would not have provided such information if it was not accurate. Applicant entered a payment agreement on the fourth debt, and he provided evidence that he is making his payments as agreed.

Applicant provided sufficient information to establish that his debts are either paid or being paid. He acted reasonably and responsibly to resolve his financial problems. The evidence supporting responsible management of his finances indicates that his

financial problems are under control. Based on Applicant's acknowledgment of his debts and the arrangements made to pay his debts, it is clear that he has been reasonable and responsible in regard to his finances. His reasonable and responsible actions towards his finances are a strong indication that he will protect and safeguard classified information. Applicant presented sufficient information to mitigate security concerns for financial considerations.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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):

(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 access to classified information 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. Applicant provided sufficient credible documentary information to show that he paid or is paying all of his delinquent debts, thus showing reasonable and responsible action to resolve his financial problems. Applicant demonstrated appropriate management of his finances and a consistent record of action to resolve financial issues. Overall, the record evidence leaves me without questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He established his suitability for access to classified information. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation.

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.d: 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 access to classified information. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge