



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-03440
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

04/24/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial security concerns.

Statement of the Case

On January 2, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated October 21, 2014, detailing security concerns for financial considerations under Guideline F. 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 (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on November 7, 2014. He admitted three of the ten allegations (SOR 1.g, 1.h, and 1.j) stating they were being paid. He denied the other seven allegations noting that they were settled and paid. Department Counsel was prepared to proceed on January 26, 2015, and the case was assigned to me on January 29, 2015. DOD issued a notice of hearing on March 13, 2015, scheduling a hearing for April 8, 2015. I convened the hearing as scheduled. The Government offered three exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 3. Applicant testified, and submitted eight exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through H. I kept the record open for Applicant to submit additional documents. Applicant timely submitted one document that I marked and admitted into the record without objection as Applicant Exhibits (AX) I. I received the transcript of the hearing (Tr.) on April 16, 2015.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 40 years old and has been employed as a technical support advisor for a defense contractor since August 2012. Applicant served on active duty in the Navy as a landing signal sailor from 1993 until being honorably discharged in 1995 as a petty officer third class (E-3). He has been eligible for access to classified information since he joined the Navy. He graduated from technical school in 2004 with an associate's degree in applied science. He has been married since 2001 and has one child. (Tr. 33-34: GX 1, e-QIP, dated January 2, 2013)

The SOR alleges, and credit reports (GX 2, dated July 2, 2014, GX 3, dated January 29, 2013) confirm the following debts for Applicant: a judgment for a credit card company for \$12,804 (SOR 1.a); a judgment for \$1,804 (SOR 1.b); a judgment for a credit card company for \$10,389 (SOR 1.c); a judgment for a bank for \$5,000 (SOR 1.d); another judgment for a credit union for \$39,093 (SOR 1.e); a debt to a university placed for collection for \$2,274 (SOR 1.f); another credit union account charged off for \$10,773 (SOR 1.g); a credit union account charged off for \$3,994 (SOR 1.h); an account charged off for \$746 (SOR 1.i); and a bank debt charged off for \$18,821 (SOR 1.j). The total amount of the alleged delinquent debt is \$105,000.

Applicant admits he was irresponsible with credit that caused him to have significant delinquent debt. In early 2008, he and his wife were able to purchase a house. They were current with all of their debts until late 2008 when his wife became pregnant and could not work for approximately nine months. At that time, Applicant had to decide whether to pay his mortgage or his credit card debts. He decided to be current with his mortgage payments and pay what he could on his credit cards. In July 2009, he enrolled in a debt relief program rather than file for bankruptcy. He had a security clearance at the time and did not want to jeopardize his clearance. He has been working with a credit relief program since 2009 to pay the delinquent debts listed in the

SOR. He consistently paid the credit relief company approximately \$1,000 each month to resolve his credit issues. His monthly payments have been reduced to \$875 since most of the debts have been paid. (Tr. 16-19, 35-37; AX H, Debt Relief Account documents dated March 12, 2013)

Applicant presented information to establish that the judgments for the credit card debts at SOR 1.a and 1.c have been paid and the judgments resolved. (Tr. 19-20; AX A, Credit Report, dated September 13, 2014; AX B, Court Documents, dated October 28, 2014)

The SOR debts at 1.b and 1.i are the same debt. Applicant settled the debt for an amount less than owed and his wages were garnished to pay the settlement. The settlement amount was paid. The debt listed at SOR 1.i is the difference between the original amount of the debt and the settlement amount. Since Applicant paid the settlement amount, the debts are resolved. (Tr. 24-25; AX E, Garnishment Documents, dated February 17, 2012)

Applicant presented information that the judgement at SOR 1.d has been paid. (Tr. 22-23, AX D, Judgment Document, dated January 26, 2015)

Applicant presented information that the amount listed for the delinquent debt at SOR 1.e is in error. The correct amount of the debt is \$3,993. The debt at SOR 1.e is the same debt as listed at SOR 1.f. It is for a student loan and Applicant has paid this debt directly to the university. The debt has been resolved. (Tr. 25-27; AX C, Judgment, dated April 22, 2010; AX F. Receipts, various dates)

The latest information from the debt relief company shows that the debts at SOR 1.a to 1.f and 1.i have been resolved. The SOR debts at 1.g, 1.h, and 1.j are being paid through the debt relief company. A settlement was reached on debt 1.g and the settlement is being paid. (AX I, E-Mail, dated April 9, 2015) The debt at SOR 1.j also has been settled and Applicant received and filed a tax form 1099 on the amount of debt forgiven. (AX G, Form 1099, 2013)

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 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 in seeking 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 the 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.

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, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her 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 at risk of acting inconsistently with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

It is well-settled that adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant admits that he was irresponsible in his use of credit cards incurring large credit card debt prior to 2008. His wife became pregnant in 2008 and could not work for nine months so they lost income. Applicant's history of delinquent debts is documented in his credit report and his SOR response. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security concerns under the following Financial Considerations Disqualifying Conditions under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

I considered the following Financial Considerations 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 at AG ¶¶ 20 (a) and (b) do not apply. Applicant incurred significant credit card debt from irresponsible spending prior to 2008. The over spending and over obligation of financial resources can recur. The debts did not happen under unusual circumstances but because of Applicant's irresponsible financial management. His credit card spending was frequent and within his control. However, it is noted that

he acted responsibly towards his finances since 2009 by making arrangements to pay the debts. He still has some debts that are being resolved.

Applicant has been working with a debt relief company. The debt relief company undoubtedly provided his financial counsel and advice. His debts are either paid or being paid so his financial problems are resolved or under control. AG ¶20(c) applies.

AG 20(d) applies. For a good-faith effort, there must be an “ability” to repay the debts, the “desire” to repay, and “evidence” of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts in the future is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant has been working with a debt relief company to resolve his financial problems since 2009. He has paid the debt relief company between \$875 and \$1,000 monthly since starting to work with them. He has a viable plan to resolve his debts through this method, and he resolved seven of the ten delinquent debts in the SOR. He is still working with the debt relief company to resolve the remaining three debts.

Applicant has shown that he is now managing his personal financial obligations reasonably and responsibly, and his irresponsible financial conduct is behind him. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information, I conclude that Applicant has mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all relevant circumstances. An 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.

