



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



In the matter of:

)	ISCR Case No. 14-04168
)	
)	
Applicant for Security Clearance)	

Appearances

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

06/23/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant provided adequate information to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is granted.

Statement of the Case

On November 11, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his employment with a defense contractor (Item 4). After an investigation by the Office of Personnel Management (Item 7), the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On October 27, 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 DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).

Applicant answered the SOR on November 17, 2014, admitting the four allegations of delinquent debt under Guideline F with explanation. He elected to have the matter decided on the written record (Item 3). Department Counsel submitted the Government's written case on February 27, 2015. Applicant received a complete file of relevant material (FORM) on April 27, 2015, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the allegations. He did not submit any additional information. I was assigned the case on June 11, 2015.

Findings of Fact

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

Applicant is a 51-year-old steamfitter foreman for a defense contractor. He has worked for the defense contractor since May 1988. Applicant was investigated and received clearance to work in various government buildings and installation since as early as 1997. He was denied a very high level access in 2003 because of the bankruptcy filing in 1998. The investigations and clearances received are the same as required for access to classified information. Applicant is a 1988 high school graduate and has not served in the military. He married in June 1990 and has four children, including twins born in June 1998. (Item 4, e-QIP, dated November 11, 2013)

Applicant listed a number of delinquent credit card debts in response to financial questions on his e-QIP. The SOR alleges, and Applicant's testimony at his personal subject interview (Item 7, dated April 23, 2014) and a credit report (Item 6, dated January 18, 2014) confirm the following delinquent accounts for Applicant; a judgment for a credit card company for \$18,330 (SOR 1.a); a credit card debt in collection for \$15,474 (SOR 1.b); a credit card debt in collection for \$9,829 (SOR 1.c); and a Chapter 7 bankruptcy filed in 1998 with debts discharged in January 1999 (SOR 1.d). The total amount of the delinquent debt is approximately \$43,600. In the FORM, Department Counsel withdrew SOR allegation 1.d. (Item 1)

Applicant has consistently stated that his financial problems were caused by his overextending himself financially and loss of his usual overtime pay. He provided this explanation as the reason for the 11 credit card debts he listed on his e-QIP. The total amount of the delinquent debt is in excess of \$163,000. This included a \$100,000 delinquency on a home equity line of credit. (Item 4) Of the eleven debts listed on the e-QIP, Applicant noted that the creditors for two accounts refused to work with him on a settlement and charged off the accounts. He settled and paid the settlements on eight accounts, and he has been and is paying the settlement on one account. The home equity line of credit was settled, and the settlement paid. Only three of the 11 debts he listed on the e-QIP remain outstanding and are the three SOR debts.

Applicant stated that the debts at SOR 1.a and 1.b are duplicate debts, and that he is still making settlement payments on this debt. The debt at SOR 1.c is one of the

debts that Applicant tried to settle but the creditor wanted a lump sum payment which he could not afford. This debt has not been settled, paid, or otherwise resolved.

Applicant did not provide any information to verify that SOR debts 1.a and 1.b are duplicates and that he is making the payments on the settlement of this debt. The credit report lists a creditor for the judgment at SOR 1.a that is the same creditor for the collection account listed as SOR 1.b. Applicant listed a debt to the creditor on his e-QIP for \$16,099 which went delinquent in August 2009. He noted on the e-QIP that he reached a settlement in October 2011 and paid a large first payment and is paying \$200 monthly on the settlement. He reiterated in his response to the SOR that he still making his agreed payments on this debt. SOR 1.a lists a judgment to the same creditor filed in 2011 for \$18,330. SOR 1.b lists a collection account for the same creditor for \$15,474. The credit report shows the last activity for this account in April 2009 and in collection for \$15,474 as of January 2011. The judgment for SOR 1.a was filed in April 2011 for \$18,330. The accounts appear to be duplicates based on the amount of the debts and the timing of the collection and judgment actions. I find that information in the file establishes that the debts are duplicates, and Applicant is paying the debt as agreed by settlement.

Applicant consistently stated that he tried to settle the account at SOR 1.c, but the creditor wanted a lump sum payment he could not afford. He has not indicated he has or will take any additional action to pay or settle this debt since it has been charged off.

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 a credit report can normally meet the substantial evidence standard to establish financial delinquency. There are three delinquent debts alleged. Applicant’s history of delinquent debts is documented in a credit report, the OPM interview, and his SOR response. Applicant’s delinquent debts are a security concern. 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 both an inability and an unwillingness to pay delinquent debt.

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;

(d) the individual has initiated a good-faith effort to repay the 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 substantial the basis of the dispute or provides evidence of actions to resolve the issue.

The mitigating conditions at AG ¶¶ 20(a), (b), (c), and (e) do not apply. Applicant has at least one debt that is current and has not been resolved. The debts occurred because Applicant overextended himself financially and lost additional income when overtime work was cut. There is no information to establish that the debts occurred under unusual circumstances, are not likely to recur, or caused by problems beyond Applicant's control. His use of credit cards is well within his control. There were no unusual circumstances that led him to incur delinquent debt. Overtime work is not guaranteed, and it is not reasonable to count on overtime pay to stay current with your debts. He does not dispute any of the debts. Applicant did not present any information that he sought or received financial counseling, or that his financial situation is under control.

For AG ¶ 20(d) to apply, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. A systematic method of handling debts is needed. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. 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.

The debts reported by Applicant on his e-QIP, and the action taken by him to resolve the debts he listed must be considered in determining Applicant's security worthiness. He paid or is paying the majority of the debts he listed. Of the 11 debts listed, only three are alleged as a security concern in the SOR. Applicant noted he settled and is paying the settlement on the remaining debt that is a duplicate debt. He contends that two of the three SOR debts are duplicates and that he is paying the debt. The background information on the debts from the e-QIP and the credit report shows that the debts are similar. One debt is the collection account and the other is the judgment on that account. I conclude that SOR 1.a and 1.b are the same debt that Applicant has resolved the debt by settlement, and he is making the agreed settlement payments.

Applicant tried to settle the one remaining but was unable to reach an agreement with the creditor or pay the one large payment requested by the creditor. The information is sufficient to conclude that Applicant had a plan to resolve his debts and that he carried out that plan. The information provided by Applicant in the e-QIP is accurate, and Applicant resolved the majority of his delinquent debts.

Applicant established that he act reasonably, prudently, and with an adherence to his financial duties, and that he is acting responsible towards his finances. The information provided by Applicant in the e-QIP shows that he has a history of settling, paying, and resolving his delinquent debt. His financial actions show he is acting in good-faith with adherence to his financial obligations. Applicant established a meaningful track record of debt resolution. The information provided and the case file support a conclusion that Applicant's responsibly managed his finances by making arrangement to settle and pay his delinquent debts. Applicant financial problems are under control. Applicant's reasonable and responsible action towards his finances is a strong indication that he will protect and safeguard classified information. Applicant has 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. I considered that Applicant has been granted a security clearance and access to sensitive government facilities since 1997. Applicant provided sufficient credible information to show reasonable and responsible action to address delinquent debts and resolve financial problems. He demonstrated responsible management of his finances and a consistent record of actions to resolve financial issues. Overall, the record evidence leaves me without questions and doubts about Applicant's judgment, reliability, and trustworthiness. He has 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. Eligibility for access to classified information is granted.

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.c:	For Applicant
Subparagraph 1.d:	Withdrawn

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