



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

In the matter of:)
)
) ISCR Case No. 14-06908
)
Applicant for Security Clearance)

Appearances

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

02/26/2016

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 July 24, 2015, the Department of Defense (DOD) 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.

Applicant answered the SOR on September 30, 2015, and elected to have his case decided on the written record. On November 16, 2015, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant and it was received on January 4, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government evidence and offered Applicant's exhibit (AE) A and B. The Government had no objection and they are admitted into evidence. The Government's documents identified as Items 2 through 8 are admitted into evidence. The case was assigned to me on February 17, 2016.

Findings of Fact

Applicant denied all the allegations in SOR with explanations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. He earned an associate's degree in 2012. He has served in the National Guard since 1999 and his present rank is E-7. He has deployed numerous times to hostile zones. He has worked for federal contractors at various times in the past and has been employed with his present employer since July 2011. He married in 1996 and divorced in January 2014. He has three children from the marriage ages 14, 15, and 18 years old. He has had custody of the children since the divorce.¹

The SOR alleges six delinquent debts totaling approximately \$25,818. The debts are supported by credit reports from April 2012, November 2014, and November 2015. Applicant attributes his financial delinquencies initially to a \$10,000 reduction in civilian pay in 2013 and a reduction in military pay due to a transfer to a reserve unit that did not provide for specialty pay that he had been previously receiving.² In 2014, his divorce impacted his finances. He assumed all of the marriages joint debt, and he was also required to pay his spouse \$1,000 a month for 24 months. He received custody of the children and does not receive child support.³

In 2013 he notified his civilian employer and military commander of his financial difficulties and presented a plan to reduce his delinquent debts. He contracted with a debt consolidation company to help him resolve his delinquent debts. He began making monthly payments of \$498 in July 2013. He consistently continued these payments until July 2014 and then reduced the payments to \$250 from August 2014 until January 2015. He paid a total of \$7,982 to reduce his delinquent debts.⁴

¹ Item 3.

² Item 2 includes documents verifying the reduction in civilian income and the payments he made to the consolidation plan.

³ Item 2, 4, 5, 8; AE A.

⁴ Item 2; AE A.

In March 2015, Applicant filed bankruptcy under Chapter 7. He completed the required financial counseling and his debts were discharged in June 2015.⁵ It appears all the debts alleged in the SOR have been discharged in the bankruptcy.⁶ Department Counsel noted in the FORM that there was a new delinquent debt that was not alleged in the SOR. In Applicant's response to the FORM, he indicated the debt was not discharged in bankruptcy and the debt is paid.⁷

In November 2015 Applicant's spousal support payments terminated. He is now better off financially. His only expenses are his rent, utilities, and car payment.⁸

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 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."

⁵ Item 2, 7; AE B.

⁶ Item 8; AE B.

⁷ AE A.

⁸ AE A.

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding classified information.⁹

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

⁹ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

Applicant had six delinquent debts totaling approximately \$25,818 that are unpaid or unresolved. His debts started to become delinquent in approximately 2013. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

Applicant attributed his financial problems to a reduction in both civilian and military pay, a divorce, assuming all of the joint debt, spousal support payment, and not receiving child support. These are conditions that were beyond his control. Applicant provided evidence that he began resolving his delinquent debts in 2013 by arranging a payment plan to a debt consolidation company. He consistently made payments to the plan from July 2013 until January 2015. He notified his civilian employer and military commander about his financial difficulties and a plan to resolve his delinquent debts through a consolidated debt program. He consistently made monthly payments totaling \$7,982. In March 2015 he filed bankruptcy and his debts were discharged in June 2015. I find Applicant acted responsibly under the circumstances and AG ¶ 20(b) applies. Because it has been less than a year since Applicant's delinquent debts were resolved, not enough time has passed to conclude AG ¶ 20(a) applies.

Applicant provided evidence that he attempted to repay his creditors by making payments through a debt consolidation plan for a period. Applicant receives some mitigation credit for attempting to repay his delinquent debts through this plan. He then had the debts discharged in bankruptcy. Final resolution of his delinquent debts through bankruptcy is not a good-faith effort to repay creditors. AG ¶ 20(d) partially applies. Applicant's spousal support obligation has terminated, and he is living within his means. It does not appear he has any outstanding debts. Applicant received some financial

counseling in conjunction with his bankruptcy. There are clear indications Applicant's finances are no longer a problem and are under control. AG ¶ 20(c) applies.

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 41 years old. He has served in the military since 1999. In 2013 due to a reduction in civilian income and military pay he began experiencing financial problems. He advised his civilian employer and military commander and instituted a repayment plan through a debt consolidation company. Applicant did not ignore his financial obligations. He took action before receiving the SOR. In 2014 he went through a divorce and assumed all of the marital debt and was required to pay \$1,000 a month for spousal support. In addition, he had custody of the three children. The divorce exacerbated his already fragile financial situation. He filed bankruptcy and his debts were discharged. He completed his spousal support obligations and is living within his means. Applicant established that he attempted to do the right thing by arranging a payment plan, but when it became obvious that the divorce would inhibit his ability to complete the plan he filed for bankruptcy. I find he acted responsibly under the circumstances and has met his burden of persuasion. The record evidence leaves me with no 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: AGAINST APPLICANT

Subparagraphs 1.a-1.f: Against 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