



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



In the matter of:)
)
) ISCR Case No. 09-07587
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Colby C. Vokey, Esq.

January 31, 2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on June 25, 2011, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on August 3, 2011. DOHA issued a notice of hearing on September 12, 2011, scheduling the hearing for October 18, 2011. The previous administrative judge granted Applicant's

request for a continuance on October 6, 2011. The case was reassigned to me on October 20, 2011. DOHA issued another notice of hearing on November 15, 2011, scheduling the hearing for December 6, 2011. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified, called a witness, and submitted Exhibits (AE) A through L, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant timely submitted documents that were marked AE M, and M(1) through M(3), and admitted without objection. Applicant's e-mail forwarding the documents is marked Hearing Exhibit (HE) I. Department Counsel's e-mail is marked HE II. DOHA received the hearing transcript (Tr.) on December 14, 2011.

Findings of Fact

Applicant is a 54-year-old employee of a defense contractor. He has worked for his current employer since 1998. He seeks to retain his security clearance. He enlisted in the military in 1975, before he graduated high school. He served on active duty until he retired in 1998 at the pay grade E-8. He has a General Educational Development (GED) high school equivalency degree. He is married with four adult children.¹

Applicant's finances were stable until a series of events started adversely affecting them in about 2006. One of Applicant's daughters became a single parent. Applicant provided financial assistance for his grandchild and for his daughter to return to college after a year off. In 2007, Applicant transferred from state A to state B. Applicant's father-in-law and mother-in-law were divorced and living in separate states. In 2008, his father-in-law became ill and was placed in an assisted living facility in state C. He passed away in December 2009. Applicant's father was a disabled veteran of World War II. Applicant's father, who still lived in state D, where Applicant and his wife grew up, was in poor health. In February 2009, he had an operation on his heart. In May 2009, he fell and was no longer able to live at home. He was admitted to a rehabilitation facility. He passed away shortly thereafter. Applicant's father's estate did not cover his father's liabilities. Applicant paid a number of his father's debts from his own money. He also bore his father's funeral and burial expenses.²

Applicant's mother-in-law developed Alzheimer's Disease in July 2009. At the time, she still lived in state D. She was no longer able to live on her own. Applicant's sister-in-law lived in state A, where Applicant and his wife used to live before they transferred to state B. Applicant and his wife still owned a house in state A. In August 2009, Applicant and his wife moved his mother-in-law to state A to be close to his wife's sister. Applicant's wife moved back to their house in state A, so that she could care for her mother. Applicant's mother-in-law was placed under hospice care in May 2011.

¹ Tr. at-22-25, 28-30; GE 1; AE A, C.

² Tr. at 19-20, 34-49, 55-56, 83; GE 3; AE A.

Applicant's wife was unable to attend the hearing because she received word that her mother's passage was imminent.³

Applicant's son and daughter-in-law separated and then divorced in 2008. Applicant provided his son financial assistance in order to pay for the divorce. Applicant's son was granted custody of their children in the divorce. Applicant continued to help his son financially after the divorce. Applicant's youngest child entered college in August 2009.⁴

The SOR alleges an unpaid \$2,100 judgment and five delinquent debts with balances totaling about \$31,100. Individual debts are discussed further below.

SOR 1.a alleges a delinquent debt of \$18,000 to a financial institution. Applicant had two additional accounts with that financial institution. One of the additional accounts was a home improvement store account that became delinquent. This debt was not alleged in the SOR. Applicant settled the debt in 2009. The financial institution issued an IRS form 1099-C (Cancellation of Debt) cancelling \$1,171, which would equate to the amount owed above the settlement amount. The cancellation had unforeseen income tax implications for Applicant. In June and August 2011, Applicant paid a total of \$1,196 to resolve his 2009 federal tax debt.⁵

Applicant's second additional account with the financial institution was charged off in March 2009, with a balance of \$6,695. This debt was also not alleged in the SOR. Applicant started making \$200 monthly payments on the debt in August 2010. In July 2011, the balance was \$4,554. In November 2011, the balance had been reduced to \$3,754.⁶

Applicant acknowledges responsibility for the \$18,000 delinquent account with the financial institution, as alleged in SOR 1.a. He is in the process of attempting to work out a settlement or a payment plan for the debt.⁷

SOR 1.b alleges a delinquent debt of \$5,587 to a collection company on behalf of a bank. Applicant and the law firm handling the debt have an agreement for Applicant to pay \$130 per month. The balance due on the account before the agreement was \$4,700. Applicant made the first \$130 payment under the agreement in December 2011.⁸

³ Tr. at 37-54; AE A.

⁴ Tr. at 32-37; GE 3; AE A.

⁵ Tr. at 60-66; GE 3-5; AE E.

⁶ Tr. at 69-70; GE 3-5; AE F.

⁷ Tr. at 66-68; GE 3-5; AE M, M(1).

⁸ GE 3-5; AE M, M(2).

Applicant settled the \$3,673 debt alleged in SOR ¶ 1.c for \$1,850. The settlement was paid in installments between July and October 2011.⁹

Applicant admitted owing the \$1,603 debt alleged in SOR ¶ 1.d. The balance on this debt was \$3,345 in August 2009. He initiated monthly payments of \$75 per month, which he later raised to \$200 per month. The balance in September 2010 was \$2,627. This debt has been paid in full, with his last payment made in October 2011.¹⁰

SOR ¶ 1.e alleges a delinquent debt of \$2,306 owed to a credit card company. Appellant owed \$8,851 on this debt in August 2009. By September 2010, he had reduced the balance to \$4,556. In June 2011, the balance was \$1,331. He paid the account in full. The credit card company has reinstated his account, with a zero balance and a credit limit of \$18,600.¹¹

SOR ¶ 1.f alleges an unpaid judgment of \$2,100. Applicant's son shares the same name as Applicant. Applicant stated that this is his son's debt. He asserted that he was never on the underlying account, even as a cosigner. Applicant's son signed a notarized statement certifying that he, and not his father, is responsible for this debt. Applicant sent an e-mail to the plaintiff's attorney on the case.¹² The attorney responded:

I cannot share information concerning your son's account with you unless I get written permission from him to do so.

As a practical matter, we do not report to credit bureaus. The bureaus report from the public record. Same name issues frequently arise but short of a payment in full by which we can then possibly vacate the judgment, there is little we can do.¹³

Applicant received financial counseling from United Services Automobile Association (USAA). He earns a good salary and receives a military retirement. He believes he is over the hump financially. He and his wife will no longer have to live apart. His children's lives have stabilized. He credibly testified that he intends to resolve all his delinquent debts. He is not accumulating new delinquent debt. His current finances are sound. He is able to make payments toward his delinquent debts, and he has a positive cash flow that can be used for savings and emergencies.¹⁴

⁹ Tr. at 70-71; Applicant's response to SOR; GE 3-5; AE G.

¹⁰ Tr. at 71-72; Applicant's response to SOR; GE 3-5; AE H.

¹¹ Tr. at 72-73; Applicant's response to SOR; GE 3-5; AE I.

¹² Tr. at ; GE 3-5; AE M, M(3).

¹³ AE M(3).

¹⁴ Tr. at 57-60, 75-81; Applicant's response to SOR; GE 3; AE J-L.

Applicant received numerous awards and accolades during his military career. His performance evaluations from his employer have been excellent. A witness, who has known Applicant since they served together in the military in the mid 1980s, testified to Applicant's honesty and trustworthiness.¹⁵

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 to be 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, administrative judges apply the guidelines 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 the applicant or proven by Department Counsel." The applicant 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

¹⁵ Tr. at 85-90; AE B, C.

Section 7 of EO 10865 provides that adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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; 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 substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's finances were sound until 2006. Then his daughter became a single parent. His father, father-in-law, and mother-in-law became ill. His father and father-in-law passed away. Applicant and his wife maintained separate residences, so that she could care for her mother. Applicant's wife was unable to attend the hearing because she received word that her mother's passage was imminent. Applicant provided his son financial assistance in order to help with his divorce and with Applicant's grandchildren. These events qualify as conditions that were outside Applicant's control.

Applicant has been attempting to resolve his financial problems for some time. He has received financial counseling. He has paid or settled several debts, including some that were not alleged in the SOR. He credibly testified that he intends to settle or pay his remaining debts. He has a plan to address his financial problems. He is now in the position where he can pay his current and delinquent debts, and he has a positive cash flow that can be used for savings and emergencies.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that Applicant acted responsibly under the circumstances and made a good-faith effort to pay his debts. There are clear indications that his financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b), 20(c), and 20(d) are applicable. AG ¶ AG ¶ 20(a) is partially applicable.

Applicant submitted sufficient documentation to establish that he is not responsible for the judgment alleged in SOR ¶ 1.f. AG ¶ 20(e) is applicable to that debt.

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):

- (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.

I considered Applicant's honorable military service and his favorable character evidence. I found Applicant to be honest and candid about his finances. I believe he is sincere about resolving his remaining financial issues. As indicated above, an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. I find that Applicant has established a plan to resolve his financial problems and has taken significant action to implement that plan. His finances do not constitute a security concern.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has 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.f: | 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge