



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



In the matter of:)
)
) ISCR Case No.10-02557
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

04/09/2012

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F. (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

On September 20, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA took that action 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 on September 1, 2006.

On October 17, 2011, Applicant answered the SOR and requested a hearing. The case was assigned to another administrative judge on December 1, 2011, and was reassigned to me on February 6, 2012. DOHA issued a notice of hearing on February 13, 2012, and the hearing was convened as scheduled on March 7, 2012. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 5 that were

admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through L that were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on April 4, 2012.

Findings of Fact

Applicant is a 49-year-old mechanic who works for a defense contractor. He has worked for that contractor since August 2009. He graduated from high school in 1980. He served in the U.S. Navy from 1989 to 1994, attained the grade of petty officer third class (E-4), and received an honorable discharge. While serving in the Navy, he deployed three times to the Persian Gulf in three years. He earned a technical school diploma in 1998. He has been divorced twice. His first marriage was from June 1983 to October 1988 and his second was from February 1990 to April 2009. He has four children, ages 6, 14, 20, and 25. He has previously held a security clearance without incident.¹

The SOR alleged that Applicant had eight delinquent debts totaling \$33,861. In his Answer, Applicant admitted three delinquent debts (SOR ¶¶ 1.d, 1.e, and 1.f) totaling \$26,638 and denied the remaining debts. His admissions are incorporated as findings of fact. In its exhibits, the Government provided substantial evidence for each of the alleged debts.²

Applicant attributed his financial problems to his divorce from his second wife. He separated from his second wife in May 2007. At that time, his lawyer advised him to stop paying his debts until the divorce was settled. His divorce was granted two and a half years later. In the divorce decree, he became solely responsible for the marital debts. He was also unemployed for about 19 months from December 2006 to June 2008. He was fired from that job for excessive absenteeism, which he was warned about as early as 2004. He acknowledged that his absenteeism was related to his marital problems and abuse of alcohol. In 2007, he received six week of inpatient alcohol treatment and has not had any alcohol problems since then.³

In 2011, Applicant enrolled in a debt consolidation program, but soon realized that he could resolve these debts on his own. He began calling the creditors, entering into settlement arrangements, and paying these debts. He initiated these actions before he received the SOR. He has successfully resolved all of the alleged debts. Below is a table that addresses each of the debts.⁴

¹ Tr. 6-8, 18-22, 38; GE 1.

² Applicant's Answer to the SOR; GE 1-5.

³ Tr. 19-22, 45-46; GE 1, 3. Applicant was also unemployed from May 2009 to August 2009 and from August 2008 to December 2008. See GE 1.

⁴ Tr. 21, 38, 41-44; GE 1-5; AE A-L.

SOR/DEBT	AMOUNT	STATUS	EVIDENCE
1.a – state tax lien	\$881	This lien was filed in February 2009. Applicant paid this debt in January 2012. It has been released.	Tr. 46-49; GE 2-5; AE A, B.
1.b – charged-off account	\$5,030	This was a credit card account that had a date of last activity of December 2006. Applicant entered into a settlement agreement with the creditor and paid this debt in June 2011.	GE 2-5; AE D.
1.c – charged-off account	\$1,101	This was a credit card account that had a date of last activity of October 2006. Applicant contacted the creditor to pay this debt and was informed it was cancelled. He has received a Form 1099-C: Cancellation of Debt.	Tr. 42-43; GE 2-5; AE E.
1.d – collection account	\$4,618	This debt had a date of last activity of September 2009. Applicant entered into a settlement agreement with the creditor and paid this debt in December 2011.	GE 2-5; AE L.
1.e – collection account	\$3,662	This debt had a date of last activity of May 2006. Applicant entered into a settlement agreement with the creditor and paid this debt in December 2011.	GE 2-5; AE F, K.
1.f – charged-off account	\$18,358	This was a loan for a voluntarily repossessed vehicle. It had a date of last activity of May 2007. Applicant entered into a settlement agreement with the creditor and paid this debt in February 2012.	Tr.43-44; GE 2-5; AE G, H, I.
1.g – 180 days or more past-due account	\$134	This debt had a date of last activity of March 2005. In his Answer to the SOR, Applicant indicated that he had no knowledge of this debt. He disputed this debt and it was expressly deleted from his credit report.	Applicant's Answer to SOR; GE 2-5; AE J.
1.h – collection account	\$77	This was a medical debt that was placed for collection in December 2005. Applicant provided a letter from the collection agency showing this debt had a zero balance.	GE 2-5; AE C.

Applicant testified openly and honestly at the hearing. He indicated that he has one delinquent debt, which was not alleged, that remains unresolved. He is currently saving money to make a lump sum payment to satisfy that remaining debt. He expects that he will pay that debt in two or three months. He testified that his oldest child is emancipated and his other children live with his second wife. He is required to pay child support for his three youngest children and is current on his child support obligations. Last year, he earned about \$73,000. He works at a remote location and his employer provides him food and lodging at no expense.⁵

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 that 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 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

⁵ Tr. 20-22, 39-40, 45-46, 49-50, 53; GE 1-4. Of note, GE4 indicates that the remaining unresolved debt is "paid or being paid by garnishment." Additionally, this debt has been reduced to a judgment that was not alleged in the SOR.

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

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* Executive Order 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 as follows:

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 delinquent debts over an extended period. He was unable or unwilling to satisfy them. This evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations 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; 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.

From March 2005 to January 2009, Applicant accumulated delinquent debts. A number of those predate his separation from his second wife. During his marital separation, his lawyer advised him to stop paying his debts until his divorce was finalized, which did not occur for two and a half years. Following that advice exacerbated his financial situation. His divorce was a condition beyond his control. He also was unemployed for about 19 months between December 2006 and June 2008. His unemployment resulted from absenteeism. His marital problems and alcohol abuse were underlying causes of that absenteeism. During that period of unemployment, he rectified his marital and alcohol problems, and they are unlikely to recur. Under these circumstances, AG ¶¶ 20(a) and 20(b) partially apply.

Applicant enrolled in a debt consolidation program in 2011, but eventually decided to resolve the delinquent debts himself. He entered into settlement agreements with a number of the creditors. He attempted to pay the debt in SOR ¶ 1.c, but was informed that debt was cancelled. He disputed the debt in SOR ¶ 1.g, and it was expressly deleted from his credit report. He successfully resolved each of the alleged debts. AG ¶¶ 20(c), 20(d), and 20(e) apply.

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 relevant 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 military service and his years of service in the defense industry. His debts either arose from his divorce or were negatively impacted by that proceeding. Since 2011, he has taken reasonable steps to resolve his delinquent debts. He has one remaining delinquent debt that was not alleged in the SOR and is taking action to satisfy it. His financial problems are being resolved and are under control. Overall, the record evidence leaves me with no questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns under Guideline F.

Formal Findings

Formal findings 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.h: 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 a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge