



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



In the matter of:)
)
) ISCR Case No. 10-03617
)
Applicant for Security Clearance)

Appearances

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

08/27/2012

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 January 20, 2012, 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) effective on September 1, 2006.

On March 8, 2012, Applicant answered the SOR and requested a decision based on the administrative record. Department Counsel, however, later requested a hearing. The case was assigned to me on April 30, 2012. DOHA issued a notice of hearing on

May 24, 2012, and the hearing was convened as scheduled on June 6, 2012. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 5 that were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibits (AE) A through L that were admitted into evidence without objection. The record was initially left open until June 20, 2012, for Applicant to submit additional matters and, based on his subsequent request, the deadline was extended until July 6, 2012. Applicant timely submitted additional documents that were marked as AE M through U and admitted without objection. DOHA received the hearing transcript (Tr.) on June 21, 2012.

Findings of Fact

Applicant is a 40-year-old systems engineer who works for a defense contractor. He had worked for another defense contractor from December 2009 to April 2012 and then began working for his current employer. He graduated from high school in 1989. He is four credits short of earning an associate's degree in computer technology engineering. He served on active duty in the U.S. Marine Corps (USMC) from 1995 to 2003, attained the grade of staff sergeant (E-6), and received an honorable discharge. He has been married since 1996 and has four children, ages 16, 14, 10, and 4. He has held a security clearance for approximately the past 16 years without incident.¹

The SOR alleged that Applicant had eight delinquent debts totaling about \$30,300. These debts were listed on credit reports obtained on December 23, 2009; September 26, 2011; and January 4, 2012. In his Answer to the SOR, Applicant admitted six of the allegations (SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.f, and 1.h), and denied the remaining two (SOR ¶¶ 1.e and 1.g). His admissions are incorporated as findings of fact.²

Following his discharge from the USMC, Applicant both worked and attended school on a full-time basis. During this time period, he generally took three or four courses per semester. As a full-time student, he received about \$1,000 per month from the GI Bill, which he used for his family's monthly living expenses. In November 2005, he purchased a sport utility vehicle (SUV) for about \$42,000. The monthly payments on that vehicle were \$842. In May 2008, he changed jobs and his work hours also changed. Because he could no longer attend school full-time, he was no longer eligible for monthly GI Bill benefits. The loss of that money created a financial hardship that caused him to become delinquent on certain accounts. At the hearing, he admitted that he exercised poor judgment in purchasing the SUV and in relying on the GI Bill benefits for paying everyday expenses. He also mentioned that he has a disabled child who requires a wheelchair to be mobile. His wife does not work so that she can care for the children. The alleged debts are addressed separately below.³

¹ Tr. 4-5; Applicant's Answer to the SOR; GE 1.

² Applicant's Answer to the SOR; GE 3-5.

³ Tr. 23-36, 47-48; Applicant's Answer to the SOR; GE 2.

SOR ¶ 1.a – collection account for \$1,007. This was a credit card account that Applicant opened in 2007 and became delinquent in 2008. He did not pay this delinquency, but submitted a letter from the collection agency that indicated, based on information provided, it was instructing the three major credit reporting agencies to delete this account from his credit file.⁴

SOR ¶ 1.b – collection account for \$1,668. In his Answer to the SOR, Applicant indicated that he received a settlement offer from the creditor, but had not yet accepted the offer. At the hearing, he testified that he paid \$1,200 or \$1,300 to settle this debt in May 2012. His most recent credit report indicates that this debt was “paid in full.”⁵

SOR ¶ 1.c – charged-off account for \$17,300. This account was a vehicle loan for the SUV that Applicant purchased in 2005. He made payments on this loan for about three years before the SUV was repossessed in November 2008. It was sold at an auction for \$19,000. Before the hearing, he contacted the original creditor and was told this debt had been transferred to another agency. In his post-hearing submission, he indicated that he established a repayment plan with the collection agency. Under this plan, he will pay \$200 per month until the debt is repaid. He authorized the collection agency to withdraw \$100 on the 1st and 15th of each month. He provided proof that he made those payments on June 15, 2012, and July 1, 2012.⁶

SOR ¶ 1.d – collection account for \$999. Applicant entered into a settlement agreement for this debt. In May 2012, he satisfied this debt by making a payment of about \$400. His most recent credit report indicates this debt is “paid in full.”⁷

SOR ¶ 1.e – collection account for \$454. This debt was for an alarm system that Applicant had on his house. He testified that he was charged for services after this account was cancelled. He disputed this debt, and it no longer appears on his credit report.⁸

SOR ¶ 1.f – collection account for \$8,508. This debt was an unsecured personal loan for \$5,000 that Applicant obtained while serving in the Marine Corps. He believes that he may have used this money to travel back home while he was on leave. He provided no proof of payments on this loan. This account has been deleted from his credit report, presumably because its age exceeded the seven-year reporting limitation of the Fair Credit Reporting Act.⁹

⁴ Tr. 24, 28-32; GE 2; AE I.

⁵ Tr. 24-25, 32-33; GE 2; AE H, J.

⁶ Tr. 27-28, 33-36, 46-48; GE 2; AE M, O-Q, .

⁷ Tr. 25-26 36-37; GE 2; AE K.

⁸ Tr. 37-38 42; GE 2; AE H.

⁹ Tr. 38-40; AE H. *See also* 15 U.S.C. § 1681c.

SOR ¶ 1.g – collection account for \$217. This debt was a cell phone bill that reportedly became delinquent in 2009. Applicant disputed this debt. He provided documentation showing he has been a customer of another cell phone company since 2006.¹⁰

SOR ¶ 1.h – collection account for \$157. This debt was a medical bill. He stated he paid this debt. It no longer appears on his credit report.¹¹

Applicant testified openly and honestly at the hearing. He reported his delinquent debts in his security clearance application. He received financial counseling while serving in the Marine Corps. He has satisfactorily resolved other delinquent debts that were not listed in the SOR, including his mortgage. He is currently living within his means. In his post-hearing submission, he provided a Personal Financial Statement that indicated his net monthly income was \$6,795, his total monthly expenses were \$3,628, and his total monthly debt payments were \$2,685, which left him a net monthly remainder of \$482.¹²

In the USMC, Applicant received four Navy and Marine Corps Achievement Medals and two Good Conduct Medals. He served in Operation Iraqi Freedom. Letters of reference describe him as a dedicated professional. An Air Force officer said Applicant had unwavering ethics, professionalism, and sense of honor and indicated that he would trust him without question. In past two years, Applicant received high grades on his work performance appraisals.¹³

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

¹⁰ Tr. 26-27, 40-41; GE 2, 4; AE L, R, S.

¹¹ Tr. 41-42; GE 2; AE H.

¹² Tr. 43-49; Applicant's Answer to the SOR; GE 1, 2, 3; AE H, T, U.

¹³ Tr. 18-19; Applicant's Answer to the SOR; AE A-F, N.

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 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 a number of delinquent debts that he was unable or unwilling to satisfy for a number of years. 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.

As a general rule, an applicant is neither required to be debt-free nor required to pay all of his or her debts immediately or simultaneously. An applicant, however, must act responsibly. In many of these cases, an important consideration is whether the applicant developed a reasonable plan for repaying his or her delinquent debts and has taken sufficient action to show that he or she has a serious intent to effectuate the plan. Depending on the facts of a given case, the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern.¹⁴

In this case, Applicant has been continuously employed throughout the span of time under review. He admits that he made mistakes that caused his financial difficulties. In particular, he overextended himself by purchasing an expensive SUV in

¹⁴ ISCR Case No. 09-08462 at 3 (App. Bd. May 31, 2011).(citing ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

2005, and acted imprudently by relying upon temporary GI Bill benefits for everyday living expenses. When his GI Bill benefits were terminated, he fell behind on certain bills. He has taken responsibility for those mistakes and has taken action to recover from them. He paid three of the delinquent debts (SOR ¶¶ 1.b, 1.d, and 1.h), instituted a repayment plan for the largest debt (SOR ¶ 1.c), and disputed three of the other debts (SOR ¶¶ 1.a, 1.e, and 1.g). AG ¶¶ 20(c) and 20(d) apply to SOR 1.b, 1.c, 1.d, and 1.h. AG ¶ 20(e) applies to SOR ¶¶ 1.a, 1.e, and 1.g. His financial problems are under control and are being resolved. It is unlikely that he will place himself and his family in a similar financial bind in the future. AG ¶ 20(a) partially applies. AG ¶ 20(b) does not apply.

Applicant had one debt (SOR ¶ 1.f) that he has not paid. He apparently waited for this debt to be deleted from his credit report due to the passage of time. Because he has not attempted to resolve this debt in good-faith, it continues to weigh against him. Nevertheless, this delinquency occurred about ten years ago and does not cast doubt on his current reliability, trustworthiness, or good judgment. I find this debt has limited security significance.

At this point, Applicant has taken sufficient action to show that he is committed to resolving the remaining outstanding debt on his credit report (SOR ¶ 1.c). He has mitigated the security concerns arising from his delinquent debts.

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 those guidelines, but some warrant additional comment.

Applicant is a talented, honorable, and mature individual. He honorably served in the USMC for four years and was awarded four Navy and Marine Corps Achievement Medals and two Good Conduct Medals. He served in a combat zone. He is well respected and highly regarded in his current job. He has held a security clearance for about 16 years without incident. By all accounts, he is a responsible, law-abiding citizen. He was candid and sincere at the hearing. He was respectful of the process and wants to correct his financial problems. He is current on his day-to-day living expenses and is working to resolve the remaining debt on his credit report. Both the applicable mitigating conditions and the whole-person concept analysis support a favorable clearance decision. Overall, the record evidence leaves me with no questions or 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