



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-06166
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: Paula Phinney, Esq.

March 15, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

The Statement of Reasons (SOR) identified Applicant as owing eight delinquent debts totaling \$273,991. Seven of his debts were for consumer purchases in 2005, after losing his job. The eighth debt was for a delinquent mortgage. Beginning in 2009 Applicant slowly began addressing his delinquent consumer accounts. All seven consumer debts have been satisfied. His delinquent mortgage resulted in foreclosure in 2008, and there is no indication the mortgage holder seeks to collect the deficiency from Applicant. He has sufficient savings to pay any deficiency if requested. Based on a review of the testimony, pleadings, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 17, 2009. On July 5, 2012, the Department of Defense issued an SOR to Applicant, 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; Department of Defense Directive

5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective in the Department of Defense on September 1, 2006.

Applicant answered the SOR (Answer) on August 3, 2012. On August 30, 2012, he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to another administrative judge on November 7, 2012, and was reassigned to me on January 24, 2013. DOHA issued a notice of hearing on January 29, 2013, scheduling the hearing for February 26, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 9, which were admitted without objection. Applicant offered Exhibits (AE) A through Z, which were admitted without objection. Applicant testified on his own behalf. The record was left open until March 12, 2013, for the receipt of additional documentation. On March 12, 2013, Applicant presented additional exhibits, marked AE AA through AE GG. Department Counsel had no objections and they were admitted into evidence as identified. DOHA received the transcript of the hearing (Tr.) on March 6, 2013.

Findings of Fact

Applicant is a 59-year-old government contractor. He has worked for his current employer since 2009. He possesses a bachelor's degree. He is married, and has three adult children. (GE 2; Tr. 110.)

The Government alleged that Applicant is ineligible for a clearance because he has made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR identified eight delinquent debts totaling \$273,991. Applicant denied each of the debts in his Answer, with the exception of SOR ¶ 1.g, which he admitted. (Answer) His debts are as follows:

Applicant was indebted on a medical account in the amount of \$142 (as alleged in SOR ¶ 1.a). This debt was incurred in 2005. Applicant credibly testified that this debt is now paid. Applicant and his attorney produced documentation that shows they each contacted this creditor in writing to request verification that this account was settled in full. His attorney provided a letter she sent to the creditor confirming their phone conversation about this debt's paid-in-full status and her request for documentation showing the debt was paid. The creditor had not responded in writing to the attorney's request by the close of the record. This debt no longer appears on Applicant's February 2013 credit report. This debt is satisfied. (GE 9; AE AA; AE BB; Tr. 54-56, 99-101.)

Applicant was indebted on a collection account in the amount of \$226 (as alleged in SOR ¶ 1.b). This debt became delinquent in July 2008. In October 2009 Applicant received a settlement offer from this creditor. He paid the settlement of \$112.84 by check on December 3, 2009. He provided a copy of the settlement offer, the check, and

his bank statement showing the check had been cashed by the creditor. This debt is satisfied. (GE 4; GE 6; AE B; Tr. 56-58.)

Applicant was indebted on a collection account in the amount of \$9,033 (as alleged in SOR ¶ 1.c). Applicant settled this debt on December 3, 2009 for \$1,500. He provided a copy of the cancelled check as proof this debt has been settled. His credit report dated April 1, 2010, reflects this debts as "paid collection." This debt is satisfied. (GE 3; AE C; Tr. 58-60.)

Applicant was indebted on a charged-off account in the amount of \$1,000 (as alleged in SOR ¶ 1.d). Applicant received a settlement offer from the creditor to settle this debt for a payment of \$275, which he paid by phone on February 14, 2011. He provided a copy of his bank statement reflecting this payment. The account is no longer listed on his credit report. This debt is satisfied. (GE 4; GE 5; GE 6; AE X; Tr. 60-62.)

Applicant was indebted on a collection account in the amount of \$435 (as alleged in SOR ¶ 1.e). Applicant incurred this debt in 2005. Applicant received a settlement offer from the creditor to settle this debt for a payment of \$178.46, which he paid by check on December 10, 2009. He provided a copy of his bank statement reflecting this payment. The account is no longer listed on his credit report. This debt is satisfied. (GE 4; GE 6; AE D; Tr. 62-66.)

Applicant was indebted on a collection account in the amount of \$652 (as alleged in SOR ¶ 1.f). This debt was incurred in 2005. Applicant satisfied this debt in March 2012. He submitted a letter from this creditor showing the account has been paid in full. This debt is satisfied. (AE E; Tr. 66-67.)

Applicant was indebted on a delinquent home mortgage in the amount of \$262,000 (as alleged in SOR ¶ 1.g). He purchased the property in 2004 for \$184,700, according to the deed of sale. He put \$12,000 down and financed the rest of the purchase with an interest-only mortgage. He did not understand the terms of the mortgage and was surprised in 2007 or 2008, when the payments went from \$1,100 per month to \$1,800 per month. He could not afford to make the higher payments but the bank was unwilling to negotiate with him. He contacted three realtors, but none were willing to list the property due to a decline in the real estate market. He also tried to sell it himself to family members and friends. He was not successful. The home was foreclosed upon in June 2008. It was resold by the lender in October 2008 for a sale price of \$216,500, as documented by the deed of sale produced into evidence. Applicant has not received a deficiency notice or had other communication with this creditor since the sale of the home four years ago. (AE F; AE G; AE DD; AE EE; AE FF; AE GG; Tr. 51-53, 102-105.)

Applicant was indebted on a collection account in the amount of \$503 (as alleged in SOR ¶ 1.h). This debt was incurred in 2005. Applicant received a settlement offer from the creditor to resolve this debt for \$302, which he paid by check on March 24, 2012. He provided a copy of the cancelled check reflecting this payment was to this

creditor and was withdrawn from his bank account. The account is no longer listed on his credit report. This debt is satisfied. (AE H; Tr. 67-68.)

Applicant attributed his debts to periods of unemployment and his wife's medical problems. He moved to state B from state A in November 2001 because his brother opened a gas station and hired Applicant to work there. He purchased a home in state B in 2004. Applicant was employed at the gas station until June 2005, when the gas station closed. He made approximately \$2,500 per month at the gas station. Applicant was unemployed for about a year, until he was hired in the food service industry in 2006. He made approximately \$2,000 a month in that position. In 2007, after defaulting on his mortgage in state B as alleged in SOR ¶ 1.g, he moved back to state A and accepted a security guard position. He worked in that position until he was hired by a government contractor in 2009. Applicant testified that his wife suffers from depression and experienced multiple hospitalizations during this period that contributed to his financial problems. Due to her condition, she is unable to work. He provided sole support for his family of five. (GE 5; Tr. 42-53.)

Applicant attempted to satisfy his debts between April and October of 2007, with the help of a credit counseling service. At that time, Applicant had approximately \$40,116.09 in delinquent debt. He paid the credit counseling service \$4,320 during this period, but was unable to continue his monthly payments through the credit counseling service. When he obtained his position with the government contractor in 2009, he slowly began to contact each creditor, research each account, and repay the valid debts on his credit report. His Answer to Interrogatories contain receipts and proof of payment for a number of additional debts that Applicant satisfied (and thus they are not included on the SOR.) He also worked with a credit counseling service in February 2013 to review his budget and verify that he is acting in a prudent manner with respect to his finances. He has no additional outstanding delinquencies. (AE Y; Tr. 70-75.)

Applicant now earns an annual salary of \$117,000 per year. He documented liquid assets totaling over \$170,000, that he has acquired since 2009. (AE CC; Tr. 75-77.)

Applicant is well respected by officers and enlisted personnel in both the US and Afghan armies. He has an excellent reputation and is seen as a valuable asset to the platoon he was assigned to serve. He has been said to display "selfless service" and perform all duties at a high level. In 2010, Applicant was awarded two certificates of excellence by the Army. He was also awarded a certificate of achievement for his "outstanding service" from July 2009 to July 2010 by the Army and a certificate of appreciation in June 2010 for his contributions in support of Operation Enduring Freedom. (AE I through AE U.)

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 protect or 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant was unable or unwilling to resolve a large amount of delinquent debt that began accumulating in 2005. The evidence supports the application of AG ¶¶ 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

A security clearance adjudication is not a debt collection procedure. It is a process designed to evaluate an applicant's judgment, reliability, and trustworthiness.¹ 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.²

Applicant's financial difficulties began in 2005 as the result of his unemployment and wife's health problems. They continued through 2009 due to his limited income during that time. Applicant's financial problems were largely caused by factors beyond his control. He responsibly attempted to address his financial delinquencies in 2007, but found he could not afford to make payments on a debt resolution plan. In 2009, when Applicant's income increased, he began addressing his delinquent accounts. He has satisfactorily resolved all of his consumer debt. He has over \$170,000 in liquid assets. Applicant made responsible efforts to resolve his mortgage debt, prior to foreclosure, but was unable to sell the property or negotiate a lower payment with the mortgage holder. The status of the first mortgage on his foreclosed home is unclear, but it appears that it has been resolved through the sale of the property that occurred four years ago. In any event, the lender is not pursuing any deficiency that might be owed. If the lender did pursue the deficiency, Applicant has sufficient funds to satisfy it. It is unlikely that Applicant's financial problems will recur, given his sufficient savings and substantial income.

Applicant received financial counseling both in 2007 and 2013. While Applicant withdrew from the 2007 debt repayment program, he was able to utilize the lessons he learned through counseling and begin to resolve his delinquent consumer debt on his own between 2009 and 2012. He also reviewed his current finances with a financial counselor in 2013.

Applicant has made a good-faith effort to pay his unsecured debts. AG ¶ 20(d) is applicable to his unsecured debts. He does not receive full mitigation under AG ¶ 20(d) because he did not provide sufficient information to document that his mortgage debt is completely resolved. However, Applicant has sufficiently managed his finances to convince me that 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(a) and 20(c) are applicable. AG ¶ 20(b) is partially applicable.

¹See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

²See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

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 pertinent facts and circumstances surrounding this case. Applicant is highly respected by those who know him. Applicant was honest and candid about his finances. Even before receiving the SOR, Applicant was acting responsibly to resolve his debts. 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. Applicant has responsibly resolved almost all of his financial problems, thereby demonstrating the significant action required. He has sufficient savings and income to avoid financial problems in the future. His finances do not constitute a security concern.

Overall, the record evidence leaves me without doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a through 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.

JENNIFER I. GOLDSTEIN
Administrative Judge