



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



In the matter of:)
)
) ISCR Case No. 11-03599
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

09/13/2012

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 March 23, 2012, 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 in writing on April 19, 2012, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on June 19, 2012. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections

and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on July 10, 2012. Applicant timely submitted an answer to the FORM that was marked Exhibit A and admitted without objection. The case was assigned to me on September 6, 2012. The Government exhibits included in the FORM are also admitted.

Findings of Fact

Applicant is a 53-year-old employee of a defense contractor. He is applying for a security clearance for the first time. He has worked for his current employer since 1999. He has an associate's degree. He is married with four adult children.¹

Applicant and his wife bought a "fixer-upper" property in 1999. There were two houses in need of repair on the property. He had a mortgage of about of about \$42,750 and two second mortgages of about \$18,900 and \$7,300, which were to be used to renovate the houses. Applicant planned to do much of the work himself, live in the larger house, and rent the smaller house. He had health problems in 2002 and 2004 that prevented him from working on the houses. His oldest child started college in 2000, followed by the next two children in 2002 and 2004. One of his daughters married in 2003. Applicant struggled, but he managed to pay his bills.²

Applicant's houses were severely damaged by three to four feet of flooding in 2004. He also lost personal property, a car, and building materials that were stored in the houses. The houses were not in a floodplain, and he did not have flood insurance. He received about \$7,500 from the Federal Emergency Management Agency (FEMA), but that did not cover his losses. Applicant's home was uninhabitable, and he moved his family into a small apartment.³

Several of Applicant's family members became ill or passed away between 2005 and 2009, including one of his children who became critically ill and was hospitalized for an extended period in 2007. Applicant was unable to pay all his bills, a number of debts became delinquent, and his properties were foreclosed. The flood-damaged houses were razed after foreclosure.⁴

Applicant and his wife considered bankruptcy, but decided against that option. They contracted with a debt settlement company in February 2009 to assist them in resolving their debts. He enrolled a number of debts in the company's debt settlement plan. He paid \$601 per month to the company, which was held in escrow until a

¹ Items 3, 4.

² Items 4; AE A.

³ Items 3-5; AE A.

⁴ Items 3-5; AE A.

settlement was reached with a creditor. He paid or settled several debts before the SOR was issued.⁵ The debts alleged in the SOR are discussed below.

An August 2010 credit report shows Applicant's foreclosed mortgage that was opened in 1999, with a high credit of \$42,750 and a zero balance. The report also noted, "Credit grantor reclaimed collateral to settle defaulted mortgage." The balance owed on the mortgage loan when the property was foreclosed in about May 2009 is unavailable from the credit report, but Applicant indicated that it was about \$28,000. He later stated the balance owed after foreclosure was \$37,245, which may have included foreclosure costs and fees. SOR ¶ 1.a alleges an unpaid judgment to the mortgage holder of \$37,245 awarded in May 2009. The property was sold at Sheriff's Sale in June 2009. The notice of Sheriff's Sale indicates there was a \$37,245 judgment in May 2009. I interpret that figure to be the amount owed as a result of the court-ordered foreclosure, before taking into account the proceeds from the Sheriff's Sale. The record does not indicate if there was a deficiency after the Sheriff's Sale, and there is no evidence of a deficiency judgment.⁶

In January 2012, Applicant settled the \$5,350 credit card debt alleged in SOR ¶ 1.b for \$2,140. He also settled the \$3,508 debt alleged in SOR ¶ 1.c for \$1,630 in January 2012. The settlement letter from the collection company handling the debt listed the last four digits of the account number and a balance of \$4,775. The August 2010 credit report lists the debt alleged in SOR ¶ 1.c with the same last four digits.⁷

The August 2010 credit report lists an \$18,900 second mortgage loan with a balance of \$7,384. The account was transferred to the creditor alleged in SOR ¶ 1.d and grew to a balance of \$9,275. Later credit reports show higher balances. This debt is alleged in SOR ¶ 1.d. The debt is included in Applicant's debt settlement plan but has not yet been settled.⁸

SOR ¶ 1.e alleges an unpaid charged-off debt of \$5,084. Credit reports from 2010 and 2011 list the balance of this debt at \$5,084. The June 2012 credit report states that \$5,084 was charged off, but it lists the balance as \$4,093. Applicant stated that this debt was settled for \$1,500 in January 2012. He did not submit a copy of the settlement letter, but he submitted a copy of his escrow statement showing a settlement payment of \$1,500 made in January 2012. I am satisfied that this debt has been settled.⁹

The credit reports in evidence list an unpaid \$6,893 charged-off second mortgage loan. This debt is alleged in SOR ¶ 1.f. Applicant stated that the debt

⁵ Items 3-5; AE A.

⁶ Items 3-8.

⁷ Items 3-8.

⁸ Items 3-8.

⁹ Items 3-8.

settlement company contacted the creditor and was told that the debt had been cancelled. He submitted a January 2012 letter from the creditor that stated, "This letter is to verify that the above referenced account with [creditor] has been satisfied. We have notified the appropriate reporting agencies to update the credit report."¹⁰

SOR ¶ 1.g alleges a delinquent debt of \$566 owed to a collection company. The debt is reported by Experian on the 2010 combined credit report on behalf of a utility company. The debt is not listed on the two Equifax credit reports from 2012. Applicant admitted responsibility for the debt. He sent the collection company a letter in January 2012, seeking "to discuss and agree on terms to resolve [the] matter." The collection company responded showing the account had a zero balance, stating "This letter will confirm that the above referenced account has been cancelled from collections with our agency. We will no longer pursue you for payment."¹¹

Applicant asserted that he plans to continue working on correcting his financial problems. In March 2012, he had \$5,844 in his debt settlement company's escrow account to be used to pay or settle his remaining delinquent debts.¹² He follows a budget and stated his plan:

We down sized our home, pay our bills when due, drive a used car, and pay our youngest son's college bills off each semester. The plan for 2012 is to check our credit report and cleanup (if any) accounts not covered under our debt settlement. The plan for 2013 is to reestablish our credit and move forward with our life.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, 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

¹⁰ Items 3-8.

¹¹ Items 3-8.

¹² Items 3-5; AE A.

¹³ AE A.

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.”

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.

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; and

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

Applicant bought a property with two houses in need of repair in 1999. His plan was to rehabilitate the houses, live in the larger house, and rent the smaller house. He had a mortgage of about of \$42,750 and two second mortgages of about \$18,900 and \$7,300, which were to be used to repair the houses. The houses were severely damaged and rendered uninhabitable by flooding in 2004. A number of Applicant's family members became ill or passed away between 2005 and 2009, including one of his children who became critically ill and was hospitalized for an extended period in 2007. Those events were beyond Applicant's control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant has been actively working to resolve his financial problems since February 2009, when he contracted with a debt settlement company. He paid or settled several debts before the SOR was issued, and he settled three of the debts alleged in the SOR. Two debts were "satisfied" or "cancelled," and one debt is scheduled to be paid or settled with the funds in Applicant's escrow account. The remaining allegation references an unpaid judgment of \$37,245, which appears to be the amount owed as a result of the court-ordered foreclosure before taking into account the proceeds from the Sheriff's Sale. The record does not indicate if there was a deficiency after the Sheriff's Sale, and the credit report lists a zero balance. Applicant asserted that he will pay or settle any remaining delinquent debts.

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. AG ¶ 20(d) is applicable to the paid or settled debts, but not to any debts that were cancelled.¹⁴ 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) and 20(c) are applicable. AG ¶ 20(a) is partially applicable.

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.

¹⁴ The Appeal Board has explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the good-faith mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or a creditor's cancellation of a debt]) in order to claim the benefit of [the good-faith mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

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.

I considered Applicant's stable work history, the factors that led to his financial problems, and the steps he has taken to remedy those problems. 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.

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.g:	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.

Edward W. Loughran
Administrative Judge