



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



In the matter of:)
)
) ISCR Case No. 11-06126
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

11/29/2012

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 April 5, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This 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 on September 1, 2006.

In an undated letter, Applicant answered the SOR and requested a hearing. The case was assigned to me on July 18, 2012. DOHA issued a notice of hearing on August 6, 2012, and the hearing was convened as scheduled on August 29, 2012. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 7 that were admitted into evidence without objection. Department Counsel's list of exhibits was

marked as Hearing Exhibit (HE) 1. Applicant testified and submitted Applicant's Exhibits (AE) A through G that were admitted into evidence without objection. Applicant's list of exhibits was marked as HE 2. The record was left open until September 26, 2012, to provide Applicant an opportunity to submit additional matters. He timely submitted documents that were marked as AE H through T and admitted into evidence without objection. Department Counsel's memorandum forwarding Applicant's post-hearing submission was marked as HE 3. DOHA received the hearing transcript (Tr.) on September 7, 2012.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor. He has been working for his current employer since March 2010. He graduated from high school in 2000. He served in the U.S. Air Force from 2000 to 2005, achieved the grade of senior airman (E-4), and received an honorable discharge. He earned a bachelor's degree in 2007. He is married and has two step-children, ages 14 and 15. In the Air Force, he held a security clearance without incident.¹

The SOR alleged that Applicant had 11 delinquent debts totaling \$50,702. In his Answer to the SOR, Applicant denied two debts (SOR ¶¶ 1b and 1.e) totaling \$9,626 and admitted the remaining debts totaling \$41,076. His admissions are incorporated as findings of fact.²

Applicant attributed his financial problems to periods of unemployment, low paying jobs, and expenses incurred in moving to different states to obtain employment. After his discharge from the Air Force, he attended college for two years to complete his bachelor's degree. His plan was to become a teacher. While attending school, he worked as a sales associate in a department store and as a waiter in a restaurant. After completing school, he moved to another state and was unemployed from March 2007 to August 2007. At that point, he was living with his future wife who also had a bachelor's degree and was planning to be a teacher. Neither was able to obtain a full-time teaching job. They worked as substitute teachers, but their work was not steady. They married in August 2008. Their total income was \$30,943 in 2008 and \$17,999 in 2009. He stated that they found themselves "juggling credit cards just to stay afloat." He continued working as a substitute teacher in two school districts from August 2007 to August 2009. They then moved again to another state and temporarily lived with her parents. He was unemployed from August 2009 to October 2009. During his periods of unemployment, he did not collect unemployment compensation. Again, they moved to another state for him to obtain employment. Since October 2009, he has worked as an aircraft mechanic for defense contractors. His wife was unemployed from August 2009 to about the fall of 2011. She now works as a customer representative for a major telephone company. He indicated that, since his wife has obtained her job, they have sufficient monthly income to start resolving the debts. Additionally, he was recently diagnosed with skin cancer,

¹ Tr. at 6-7, 26-29, 62-63; GE1, 5, 7.

² Applicant's Answer to the SOR; GE 2-4, 6.

underwent major surgery, and missed work for about two and a half weeks. While recovering from his surgery, he received \$300 of disability pay per week.³

The alleged debts are addressed separately below.

SOR ¶ 1.a – collection account for \$592. This was a credit card account with a date of last activity of January 2011. Applicant settled and paid this debt on July 19, 2012.⁴

SOR ¶ 1.b – collection account for \$41. This was a medical account that had a date of last activity of January 2011 and was placed for collection in July 2011. Applicant denied this debt because he had no knowledge of it. He testified that he called the company in March 2012 and was told him the debt belonged to another person. In his post-hearing submission, he indicated that it was his wife's debt. He provided a letter from a collection agency showing a medical debt for \$22 was paid on September 14, 2012.⁵

SOR ¶ 1.c – collection account for \$5,888. This was a credit card account from a jewelry store that he used primarily for cash advances. It had a date of last activity of August 2009. He testified that this debt was settled. In support of that claim, he indicated that the debt no longer appeared on his credit report, but provided no proof of payment.⁶

SOR ¶ 1.d – collection account for \$4,498. This was a credit card account with a date of last activity of September 2009. Applicant settled and paid this debt for \$1,439 in August 2012.⁷

SOR ¶ 1.e – charged-off account for \$9,585. This was a credit card account with a date of first delinquency/date of last activity of November 2009. Applicant used this credit card for expenses arising from his wedding. He denied this debt because he believed it was a duplicate of the account listed in SOR ¶ 1.h, below, which he admitted. In his security clearance application (SCA), however, he listed both accounts as being delinquent. He indicated that he listed both accounts on his SCA because he was merely copying information from credit reports. His contention that he only had one account is supported by his credit reports. Each of the credit reports in the record listed

³ Tr. at 14-15, 26-27, 45-47, 53-57, 59-64; GE 1, 4, 7; AE Q, T.

⁴ Tr. at 35-38, 42, 45; GE 2-4, 6, 7; AE A, H, K.

⁵ Tr. at 29-30, 38-40, 43; GE 3, 4; AE H, M. The account number in the collection agency's letter does not match the account number for the alleged debt in GE 3. However, it is unknown whether this debt was transferred to another collection agency since that credit report and a new account number was assigned to it.

⁶ Tr. at 38-42; GE 1-4, 6, 7; AE A, D.

⁷ Tr. at 42-43; GE 2, 4, 6, 7; AE A, B, H, I.

only one credit card account from this creditor. Although the partial four-digit account number in GE 6 varies from the account numbers in the other credit reports, the date the account was opened (January 2008) and the date of last activity on the account (November 2009) is identical in all the credit reports. I find the account alleged in SOR ¶ 1.h, below, is a duplicate of this debt. He provided no proof of payments towards this debt.⁸

SOR ¶ 1.f – collection account for \$936. This was a credit card account with a date of last activity of February 2010. In his post-hearing submission, Applicant provided documentation showing this debt was settled and paid on September 10, 2010.⁹

SOR ¶ 1.g – charged-off account for \$1,791. This was a credit card account that has a date of last activity of July 2009. Applicant stated that this creditor has been very hard to deal with. He stated that there has been no movement in settling this debt.¹⁰

SOR ¶ 1.h – charged-off account for \$9,041. This account was a duplicate of the one alleged in SOR ¶ 1.e, above. I find in favor of Applicant on this allegation.¹¹

SOR ¶ 1.i – charged-off account for \$11,700. This was a credit card account that has a date of last activity of October 2009. Applicant stated that he was attempting to negotiate monthly payments with the creditor. He provided no proof of payments.¹²

SOR ¶ 1.j – collection account for \$5,759. This was a credit card account that was placed for collection in February 2011 and had a date of last activity of November 2011. The original creditor charged off this account. No proof of payment was provided.¹³

SOR ¶ 1.k – charged-off account for \$871. This was a credit card account with a date of last activity of October 2009. In his post-hearing submission, Applicant provided documentation showing this debt was settled and paid for \$500 on September 14, 2011.¹⁴

At the hearing, Applicant provided portions of credit reports reflecting he had three open revolving accounts that were current, that he had no collection accounts pending, that he had no public records on file, and that his credit score was “fair”, *i.e.*,

⁸ Tr. at 14, 30-35, 43; GE 1-4, 6; AE A, H, O.

⁹ Tr. at 42-43, 45; GE 1-4, 7; AE A, H, N.

¹⁰ Tr. at 42-43; GE 1-4, 7; AE A.

¹¹ See note 8 and accompanying text.

¹² Tr. at 42-44, 69; GE 1-4, 6, 7; AE A.

¹³ Tr. at 42-43; GE 2-4, 7; AE A.

¹⁴ Tr. at 42-43, 45; GE 2-4, 6, 7; AE A, L.

609. He has indicated that he plans to pay his debts. He also stated that he contacted creditors in an attempt to settle particular debts and was informed the balance was zero.¹⁵

Applicant spoke to two attorneys about filing bankruptcy. At that time, he and his wife did not have enough money to file bankruptcy. After she became employed, they decided to try to settle the debts rather than file bankruptcy. In February 2012, he submitted a personal financial statement (PFS) that reflected his net monthly income was about \$4,684, his total monthly expenses were \$3,865, and his monthly debt payments were \$690, which left him a net monthly remainder of \$129. He testified that, since submitting the PFS, his wife's salary increased about \$500 per month and his monthly medical insurance payments decreased about \$200. He and his wife have about \$80,000 in student loans, some of which are in a deferment status. He also provided documentation showing he resolved a delinquent debt with the Department of Veteran's Affairs that was not alleged in the SOR.¹⁶

Applicant and his wife took a Caribbean cruise in November 2006. He testified that his wife's sister paid for that cruise. For his honeymoon, he and his wife took another Caribbean cruise in December 2008. He testified that they "probably paid a little more than [they] should have" for the honeymoon cruise. He and his family went on an out-of-state vacation to Florida this past year.¹⁷

Applicant provided two reference letters. One is from a co-worker and the other is from a work lead, which is a supervisor's right-hand man. They describe him as reliable, hard-working, and conscientious. They noted that he is mission oriented and is an asset to the organization.¹⁸

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

¹⁵ Tr. at 43-46, 53-57; AE C-F.

¹⁶ Tr. at 45-53, 59; GE 4; AE J.

¹⁷ Tr. at 53-55; GE 1.

¹⁸ Tr. at 57-59; AE G.

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 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 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.

Applicant graduated from college in 2007. At that time, he and his future wife planned to become teachers. They worked as substitute teachers for two years, but were unable to obtain permanent teaching jobs. As substitute teachers, their work was not steady and their income was low. They moved to different locations for better job opportunities. During this period, Applicant was unemployed from March to August 2007 and from August to October 2009. His wife was unemployed from August 2009 to the fall of 2011. Applicant's and his wife's unemployment/underemployment were conditions beyond their control that contributed to the alleged financial problems. Applicant has not lived an extravagant lifestyle. Although he stated that he paid more than he should have for a honeymoon cruise in 2008, that expenditure was an exception and occurred before his financial difficulties became apparent. He consulted with attorneys about filing

bankruptcy, but decided against doing so. When his wife obtained a job in the fall of 2011, his financial situation finally improved to the point at which he was able to start addressing his delinquent debts. With his modest net monthly remainder, he has been able to resolve five of the alleged debts (SOR ¶¶ 1.a, 1.b, 1.d, 1.f, and 1.k). He entered into settlement agreements with the creditors for those debts and paid them. He has contacted the remaining creditors seeking to enter into payment arrangements, and a number of them informed him the debt no longer existed. His most recent credit report reflected that he had no collection accounts pending and no judgments or liens on file. While a debt falling off of credit reports may not establish good-faith resolution of it, such evidence supports a determination that an individual's financial situation is being resolved or is under control. Applicant has acted responsibly in addressing his delinquent debts. He is living within his means and his financial problems are unlikely to recur. AG ¶¶ 20(b) and 20(c) apply. AG ¶¶ 20(a) and 20(d) partially apply. AG ¶ 20(e) applies to the debt in SOR ¶ 1.h because it is a duplicate of the one in SOR ¶ 1.e.

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.

Applicant served in the Air Force for five years. He previously held a security clearance in the military without incident. By all accounts, he is a law-abiding citizen. His current co-workers describe him as reliable and hard working. Through no fault of his own, he encountered financial difficulties and has taken responsible steps to resolve those problems. He was candid and sincere at the hearing. He is current on his day-to-day living expenses. His financial problems are not likely to recur. Both the applicable mitigating conditions and the whole-person 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 the financial considerations guideline.

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.k: | 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