



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



In the matter of:)	
)	
)	
)	ISCR Case No. 11-09374
Applicant for Security Clearance)	

Appearances

For Government: Stephanie Hess, Esq., Department Counsel
For Applicant: *Pro se*

01/17/2014

Decision

LYNCH, Noreen, A., Administrative Judge:

On October 16, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on December 6, 2013. A notice of hearing was issued on December 13, 2013, scheduling the hearing for January 7, 2014. Government Exhibits (GX) 1-4 were admitted into evidence, without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-C, which were admitted without objection. I kept the record open for additional submissions which the Applicant timely provided. The submission was entered into the record without objection as AX D. The transcript (Tr.) was received on January 9, 2014. The record closed on January 13, 2014. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations), with the exception of ¶¶ 1.c and 1.d.

Applicant is a 46-year-old defense contractor. He served in the U.S. Navy from October 1986 until October 1988. Applicant received his undergraduate degree in 1993. Since 2007, Applicant has served in the Army National Guard. He has been with his current employer since February 2011. (GX 1) He has held a security clearance since 2011.

Applicant married in 1993. He and his wife have one daughter, who is 17 years of age. Applicant and his wife divorced in 2000. Applicant pays child support for his 17-year-old daughter. Applicant pays \$520 a month. The Child Support Agency (CSA) considers him current with his obligation.

When Applicant was married, his wife was the primary wage earner. Applicant worked as much as he could, but he was in school. He had many temporary or part time jobs that paid little money. From 2001 until 2005, (after the divorce) Applicant returned to work full time. His salary did not support the amount of child support that he was ordered to pay. He incurred some arrears, which he is now repaying. The arrears will be paid by September 2014. (Tr. 28)

The SOR alleges four delinquent debts, including collection accounts and a charged-off account totaling approximately \$27,900.

Applicant received counseling and consulted a bankruptcy attorney. He decided against filing for bankruptcy. He wanted to pay or settle his legitimate debts. (Tr. 29) In 2005, he also contacted a credit restoration company. He was not pleased with their efforts so he stopped using them.

The account alleged in SOR 1.a for approximately \$3,500 is awaiting resolution. When Applicant learned about the debt, he contacted the original creditor and learned that it had been sold to a collection company. He has called several times and no one has returned his call. He called as recently as last month. He stands ready to establish a payment plan.

The account in the amount of \$12,093 alleged in SOR 1.b is paid. (AX A) Applicant contacted the original creditors and established a payment plan for the account. In 2011, Applicant paid \$2,000, and in December he completed his payments. (Tr. 17)

The past-due account alleged in SOR 1.c for approximately \$3,968 is paid. Applicant provided information that the account has a zero balance. (AX B) He has no other accounts with this bank.

The past-due account alleged in SOR 1.d is the same account alleged in 1.c. A credit report shows that the account is paid and closed. (GX 4) The Government did not dispute that this is the same account. (Tr. 24)

Applicant's annual income is about \$60,000. He also receives his National Guard pay. He remarried in 2007, and his wife's income contributes to the finances. (Tr. 30) He uses a budget. He estimates that after expenses, he has approximately \$662 net monthly remainder. (GX 3) Applicant submitted documentation that he is current on his car note. (AX C) Applicant has no new debt. He saves money each month. Applicant submitted a post-hearing submission, which embodies his family budget. (AX D)

Applicant stressed that he has been proactive since the financial issues occurred. He obtained a credit report and is working with his wife to maintain a healthy financial situation. He paid other accounts that were on an original debt list from the government. He has been addressing his debts for at least one and a half years prior to the hearing. He disclosed his delinquent debts and his method of repayment in his March 2011 security clearance application. (GX 1) He presented a 2014 credit report that he uses to monitor his debts. (AX B)

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by

Department Counsel. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 Executive Order 10865 provides that 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

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

Applicant acknowledges that he has delinquent debts. His credit reports confirm the debts. Consequently, the evidence is sufficient to raise the disqualifying conditions in ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

- (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's financial problems began when his marriage dissolved. His wife was the primary wage earner. He was in school, and had worked part time or in seasonal work, which did not provide a large income. He did not obtain a steady, reliable, well-paying position until 2011. He was proactive in resolving his debts. He did not ignore his creditors. He also had child support to pay, which he did not ignore. However, due to the amount of the child support, he did not have sufficient money for all his bills. Applicant has acted responsibly. In sum, Applicant made good-faith efforts to resolve and address the financial issues. He is still waiting to hear from one creditor. He stands ready to make payment arrangements. He has improved his credit score. Applicant received financial counseling and uses a budget. He has earned credit under AG ¶¶ 20(a), (b), (c) and (d).

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is a 46-year-old professional with a long history of employment in the defense arena. He honorably served in the military and has had a security clearance. He serves in the National Guard.

Applicant has paid several debts that are not alleged on the SOR. He also paid three SOR debts. He produced documentation that proves his assertion. Applicant incurred the delinquent debt as a result of separation, divorce, and low paying jobs. He had not been working when he was married. His ex-wife was the primary earner. Until 2011, he did not have steady, reliable, well-paying employment. He was not able to pay his debts, but he honored his child support obligations. Applicant has met his burden to mitigate the financial considerations security concerns.

Applicant was candid at the hearing. He acted reasonably under the circumstances. I have no doubts or reservations about Applicant's current reliability, trustworthiness, and ability to protect classified information. Clearance is granted.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	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 a security clearance. Clearance is granted

NOREEN A. LYNCH.
Administrative Judge