



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



In the matter of:)
)
) ISCR Case No. 11-12437
)
Applicant for Security Clearance)

Appearances

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

09/23/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On April 24, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on May 20, 2013, and requested a hearing before an administrative judge. The case was assigned to me on July 23, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 9, 2013. I convened the hearing as scheduled on August 29, 2013. The Government offered

exhibits (GE) 1 through 8 that were admitted into evidence without objection. Applicant testified and did not offer any exhibits. The record was held open until September 12, 2013, to provide Applicant an opportunity to present exhibits, which he did. They are marked AE A through K. They were admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on September 10, 2013.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.b, 1.e, and 1.g. He denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 57 years old. He is a high school graduate. He is twice divorced and remarried to his first wife. He has five grown children. He has worked for his current employer, a federal contractor, since 2010.

Applicant experienced financial difficulties when he was laid off from his job in October 2008, and his wife was laid off from her job six weeks later. His wife was unemployed for three to four months. Applicant was unemployed until December 2009. He was hired as a temporary employee by a federal contractor. He worked in that capacity until approximately October 2010. He changed employers in November 2010. He was diagnosed with serious health issues in late 2010, and on January 4, 2011, he had surgery. Applicant's health issues were emotionally consuming. His unemployment, his wife's unemployment, and his health issues impacted his finances. During this period of time, he and his wife prioritized which bills to pay. They paid their mortgage and other household bills, but other bills they delayed paying because they did not have the money. When they were both unemployed they had no income, but he received unemployment benefits. Applicant's annual gross salary before he was laid off was approximately \$44,000. It is now approximately \$52,000.²

The debt in SOR ¶ 1.a (\$727) was for a credit card. Applicant stated that the creditor agreed to settle the debt for \$541. He provided proof that he made three payments of \$187 in December 2012, January 2013, and February 2013 to satisfy the debt.³

The debt in SOR ¶ 1.b (\$1,965) is a medical debt that Applicant disputes. Applicant had surgery, and his primary medical insurer paid \$62,921 of the \$64,887 bill. His secondary insurer was to pay the remainder. Applicant has been in communication with the secondary insurer to resolve the debt. The secondary insurer is disputing its

¹ Hearing Exhibit I is Department Counsel's memorandum.

² Tr. 19-28, 53-57; GE 1.

³Tr. 28-31, 58-62; GE 3; AE D, F, G, J, K.

obligation to pay because it claims the primary insurer paid more than it would have on the original claim. Applicant has a legitimate dispute.⁴

The debt in SOR ¶ 1.c (\$443) is for cable television service. The creditor claimed Applicant did not return the cable box. Applicant stated he returned the cable box in the prepaid box provided to him. The cable box is useless to Applicant with his current service. He got tired of disputing the debt and settled it.⁵

The debt in SOR ¶ 1.d (\$731) is for a credit card. Applicant stated he settled the debt for \$458 in December 2012. He provided proof of the payment.⁶

The debt in SOR ¶ 1.e (\$1,820) is for a credit card. Applicant began a plan to repay the debt in 2011 with monthly payments of \$50. He stated he continues to make the payments. He provided some proof of payments.⁷

The debt in SOR ¶ 1.f (\$374) is a store account debt. Applicant stated he settled the debt with the creditor for \$205 in December 2013. He provided proof of the payment.⁸

The debt in SOR ¶ 1.g (\$1,765) is for delinquent homeowner association fees. Applicant stopped paying this expense when he became unemployed. He has had a repayment plan since November 2011 and has been making payments of \$100 monthly. He provided documents to show he has made timely monthly payments totaling \$2,500 on the payment plan.⁹

Applicant has been selected as employee-of-the-quarter twice in the past year. He is always on time for work and stays late when needed. He has never received a complaint about his work.¹⁰

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

⁴ Tr. 31-36; GE 3.

⁵ Tr. 36-40; GE 3; AE D, E.

⁶ Tr. 40-41; AE D, H.

⁷ Tr. 41-46; GE 3 at page 9-10.

⁸ Tr. 45-46; AE D.

⁹ Tr. 46-53; GE 3 at pages 14, 21, GE 4; AE C.

¹⁰ Tr. 63-64.

disqualifying conditions and mitigating conditions, which are 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 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 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 not drawn 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, 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 and 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 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." 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant had seven delinquent debts, totaling approximately \$7,800, that he was unable or unwilling to pay. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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.

AG ¶ 20(a) is not established because Applicant's debts are recent, and he is still resolving some of them. Applicant attributed his history of financial problems to a long period of unemployment for himself, three to four months of unemployment for his wife, and his serious medical issues. These things were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant made efforts to make payments on some of his bills after he went back to work. He also established payment plans. He did this before he received the SOR. Applicant acted responsibly when he went back to being employed full time. AG ¶ 20(b) applies.

Applicant is paying his bills and has settled or is addressing his remaining debts. His wife is working. It appears his financial problems are under control. AG ¶ 20(c) applies. Applicant initiated payments on some of his debts before he received the SOR. He settled some of the debts and has payment plans for others. AG ¶ 20(d) applies because he initiated good-faith efforts to repay his delinquent debts. Applicant disputes the medical debt in SOR ¶ 1.b. He has a primary and a secondary insurer. The secondary insurer is supposed to pay what the primary does not. It refuses to do so because it determined it would not have paid the amount the primary paid. Applicant is attempting to resolve this debt and indicated the reason he pays for a secondary insurer is to pay what the primary does not. Applicant has a legitimate dispute and is attempting to resolve it. AG ¶ 20(e) applies.

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 the 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 is 57 years old. He had a long period of unemployment. His wife was unemployed for three to four months during his period of unemployment. He also had serious medical issues. These factors impacted his finances. He and his wife prioritized what bills to pay. Prior to receiving the SOR, Applicant negotiated settlements on some of his debts, and he is resolving others through payment plans. He has a legitimate dispute with his secondary insurer on a large medical debt. Applicant has acted responsibly in resolving his financial problems. I found Applicant credible and believe he will follow through and continue to pay all of his delinquent debt. Applicant's finances are not a security concern. 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 mitigated the security concerns arising under the financial considerations guideline.

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 a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge