



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



In the matter of:)
)
-----) ISCR Case No. 11-13238
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

11/15/2013

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

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

Statement of the Case

On February 8, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) 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 (AG) effective within the DOD on September 1, 2006.

In a letter dated March 2, 2013, Applicant admitted the three allegations raised in the SOR and requested a decision without hearing. Counsel for DOD prepared a Form of Relevant Material (FORM), containing nine attachments, to support the Government’s position in this matter. Applicant timely responded with additional narrative and attachments. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on October 28, 2013. I have thoroughly reviewed the FORM and other case file materials. Based on the materials submitted, I find that Applicant met his burden in mitigating financial considerations security concerns. Clearance is granted.

Findings of Fact

Applicant is a 60-year-old systems engineer who has worked for the same employer since late 2010. He attended college for multiple years, but did not earn a degree. While in school, Applicant was a cadet in the Air Force ROTC, where he was considered to be enlisted in the Air Force Reserves as an Airman from September 1974 to March 1977. He is married and has grown children.

When interviewers met with him in August 2011, following his application for a security clearance, Applicant described his current financial situation as “pretty bad.” (FORM, Item 7, Interrogatories, at 4). He attributed some of his financial distress to his 2007 sponsorship of a brother-in-law and the brother-in-law’s family into the United States. This financial assistance lasted to at least the end of 2009. Applicant also provided for his mother-in-law, who lived with Applicant and his wife. Meanwhile, also in 2009, Applicant’s wife lost her job. She has only maintained part-time positions since that time. Although Applicant owned a rental property for generating income to meet his monthly mortgage obligations, his tenants eventually stopped paying rent. Throughout this time, medical bills were received for undisclosed treatments.

In addition, since 2009, Applicant spent considerable sums to supplement his children’s educations, such as attendance at leadership programs that cost about \$4,000 per student. Applicant sometimes paid routine bills and groceries with his credit card. In general, “[h]e found himself juggling [his] finances.” (*Id.*) As a result, payments became late, leading to related charges. Finally, for an unspecified period of time, he was unable to pay his bills. (*Id.*) He struggled to rectify the situation up to the time he met with investigators in 2011. In the end, however, his July 2011 credit report reflected debts in the amount of \$27,810, \$34,940, and \$26,250, respectively; these are the same balances shown in the SOR for allegations (debts) 1.a, 1.b, and 1.c.

Since that time, Applicant has attributed his inability to satisfy his debts to his deadbeat tenants. He went to court to make sure the tenants were evicted, and he is now awaiting reimbursement from the tenants for damages to the property. (FORM, Item 4, at 1) In addition, Applicant has reached 59.5 years of age, and he has transferred funds from his IRA to address SOR Debt 1.c, a debt related to Applicant’s wife’s primary credit card. That debt, for \$26,250, was settled by a payment of \$14,000 on June 17, 2013. (Response to the FORM at 1 of 2; see attached bank statement for May 20, 2013, through June 19, 2013, at 3 of 8, entry eight from bottom)

Tragically, one of Applicant’s children died on active duty in May 2013. (Response to the FORM, Report of Casualty, dated Jun. 5, 2013) As next of kin, Applicant received a \$100,000 death gratuity; his share of the life insurance proceeds amounted to approximately \$200,000. (Response to the FORM, May 22, 2013, deposit, and insurance company statement, dated Jun. 4, 2013, respectively) These sums were deposited into Applicant’s bank between May 20, 2013, and June 19, 2013. Applicant applied these funds to satisfy SOR Debt 1.b for \$34,940 for a negotiated settlement

amount of \$14,819.63. (Response to the FORM at 1 of 2; see attached bank statement covering period Jun. 23, 2013, to Jul. 19, 2013, at 2 of 8, fourth entry from bottom)

The holder of the obligation noted at SOR Debt 1.a was tracked down by Applicant. He discovered the creditor had charged off the debt, issued him a 1099-C form, and, on or before December 31, 2012, filed a copy of the 1099-C with the Internal Revenue Service (IRS). (Response to the FORM, 2012 Form 1099-C, Cancellation of Debt). Under Federal tax law, Applicant was thus required to pay taxes on this charged-off debt because it is considered income to him. As required, Applicant timely satisfied his obligation to the IRS on this charged-off debt. (Response to the FORM, see attached bank statement for May 20, 2013, through June 19, 2013, at 8 of 8)

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 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.

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.

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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant had three delinquent debts. Such facts are sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 acquired delinquent debt between 2009 and 2011. Despite Applicant's best efforts, deadbeat tenants failed to timely pay rent and caused damage to his rental property. He obtained a judgment against the tenants for money owed. He acted reasonably to resolve the financial problems created by the tenants. Such facts are sufficient to raise AG ¶ 20(b). Because there is no evidence Applicant received financial counseling, however, the first section of AG ¶ 20(c) does not apply.

Moreover, as soon as he was eligible at age 59.5 to make a withdrawal from his IRA, Applicant withdrew the sum necessary (\$14,000) to settle his wife's credit card obligation (SOR Debt. 1.c) Soon thereafter, tragedy struck his family. The payout in death benefits and life insurance on his child provided him with about \$300,000 in expendable income. From that balance, Applicant settled the debt noted at SOR Debt 1.b and satisfied that obligation by payment of \$14,819.63. As for SOR Debt 1.a, Applicant paid the Federal taxes associated with that debt, which had previously been charged-off. In this manner, notable payments were made on the three significant delinquent debts reflected in Applicant's credit reports and the SOR. Even after these payments, Applicant has a considerable balance from the insurance payout in the approximate amount of a quarter of a million dollars. Therefore, the second section of AG ¶ 20(c) applies, and AG ¶ 20(d) partially 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). 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 incorporated my comments under the three guidelines at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 60-year-old systems engineer who has worked for the same employer since late 2010. He attended some college, during which time he was an Air Force ROTC cadet for over two years. He is married and has grown children, one of whom recently passed away while serving in the United States military.

Applicant's initial acquisition of debt started out with the best intentions, but those intentions went awry. He helped sponsor his in-laws to come to this country, but their trek to United States citizenship, employment, and financial independence was protracted. He also became the sole provider for his mother-in-law. He maintained a financial buffer to help supplement his income in hard times -- specifically, he owned a rental property which generated regular income. His renters at the time, however, proved to be deadbeats who not only withheld rent payments, but damaged Applicant's property. Although Applicant prevailed against them in court, he has yet to realize any financial recompense from his action.

What led to Applicant's satisfaction is two-fold. First, he became eligible to make a withdrawal from his IRA to satisfy his wife's credit card. Second, he received the death benefit payment and life insurance share owed to him upon the death of his child. Applicant worked out arrangements with two of his creditors. Those arrangements on the debts reflected in the SOR were apparently agreed upon and executed. Although the creditors' names changed and debt balances were renegotiated, Applicant's credit reports and the case materials cite to no other notable delinquent debts except those reflected in the SOR. Therefore, it is reasonable to conclude that the two debts at issue in the SOR are the same debts noted in Applicant's 2011 credit report. In addition, he paid the taxes owed on the charged-off debt cancelled by his third creditor in a timely manner. Consequently, as a result of his negotiations and settlements, the facts persuasively indicate that Applicant has addressed the debts at issue. In light of these facts, Applicant has mitigated financial considerations security concerns. 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
Subparagraphs 1.a-1.c:	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.

Arthur E. Marshall, Jr.
Administrative Judge