



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



In the matter of:)
)
) ISCR Case No. 11-13336
)
Applicant for Security Clearance)

Appearances

For Government: Robert Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

01/10/2014

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 February 20, 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 an undated response to the SOR Appellant requested a hearing before an administrative judge. The case was assigned to me on September 20, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 30, 2013. I convened the hearing as scheduled on December 3, 2013. The Government

offered exhibits (GE) 1 through 3, and they were admitted into evidence without objection. Applicant testified. He did not offer any exhibits. The record was held open until December 26, 2013, to provide Applicant the opportunity to present exhibits, which he did. They were marked AE A and B and admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on December 11, 2013.

Findings of Fact

Applicant responded to the allegations in the SOR with explanations, but did not admit or deny each one. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 43 years old. He is a college graduate. He earned a bachelor's degree in 2005 and a master's degree in 2010. He served in the Marine Corps from 1989 to 1991 until he was honorably discharged due to a medical condition. He served in the Army National Guard from 1998 to 2004 and was deployed to Iraq from February 2002 to February 2003. He received an honorable discharge in 2004. He has been married twice. His first marriage ended in divorce in 2003 after eight years. He has a 15-year-old son from the marriage. He remarried in 2006 and has a three-year-old son and two stepchildren, ages 22 and 12.²

From January 2004 to January 2005, Applicant attended college. Applicant was employed with a state government from April 2006 to September 2010. He unexpectedly lost this well-paying job when he was not reappointed to the position. Applicant found another job in September 2010, but it required that he move to a different state. He did so, but his family remained, and he was required to maintain two residences. Although the job was a temporary position, he believed it would turn into a permanent one. It did not and ended in May 2011. Applicant found a new job in June 2011, but during the training period of four weeks he was only paid minimum wage. He was still separated from his family, and in August 2012, he transferred back to the state where his family was living.³

After losing his well-paying job, Applicant began to experience financial problems. He exhausted his savings in an attempt to stay current on his debts. In May 2013, his wife was unable to work when she was injured at her job. His family relied on her income to pay the bills. She is currently not working.⁴

Applicant also attributed his financial problems to his divorce in 2004. While he was serving in Iraq his first wife did not maintain his finances. When he returned he

¹ Hearing Exhibits I and II are Department Counsel's memoranda.

² Tr.22, 24, 78-81, 98.

³ Tr. 23-31, 76-78.

⁴ Tr. 31-33.

realized she had written checks beyond his ability to pay. Applicant was also a full-time college student when he returned to civilian life. He received educational benefits from the federal government to help pay for school, but incurred additional debts. He estimated he has about \$85,000 in student loans. He is still in college earning another degree so the loans are not yet due.⁵

There are four debts alleged in the SOR. The debt in SOR ¶ 1.a (\$3,048) is a charged-off credit card debt. Applicant received a settlement offer from the company and has paid the settlement in full. He provided proof of his payment.⁶

The debt in SOR ¶ 1.b (\$876) is a store credit card account that was charged-off. Applicant provided proof that he paid made a final payment in April 2013 and the account was paid is full.⁷

The debt in SOR ¶ 1.c (\$7,027) is a charged-off credit card account. Applicant settled the account for \$2,460. He provided proof that he completed the settlement payments in April 2013.⁸

The debt in SOR ¶ 1.d (\$57,003) is a bank loan that was charged-off. Applicant obtained this loan in 2009. He consolidated his debts at the time and used this loan to make one payment. He was current on his payments until September 2010 when he lost his well-paying job. He made an agreement with the creditor in March 2013 to pay \$250 a month on the debt. He fell behind for a couple months, but he provided proof that he is current on his payments and has arranged an automatic withdrawal from his account to make future payments.⁹

Applicant stated that he has accepted a teaching position and will begin to receive income from it in December 2013, which will put him in a better financial position.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

⁵ Tr. 21, 42-43, 45-51.

⁶ Tr. 19, 90; AE A; Answer to SOR.

⁷ Tr. 87-88; Answer to SOR.

⁸ Tr. 87; Answer to SOR.

⁹ Tr. 34-41, 44, 52-58, 60; AE B; Answer to SOR.

¹⁰ Tr. 60-65.

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 four delinquent debts that were unpaid or unresolved. 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established because Applicant's is still resolving his largest debt. Applicant attributed his history of financial problems to his ex-wife mismanaging his finances while he was deployed, the loss of a well-paying job, and having to maintain two households for a period of time. In addition, his wife was unable to work in May 2013, which exacerbated his financial difficulties. These things were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly

under the circumstances. Applicant paid or settled three of the delinquent debts alleged in the SOR. His largest debt is a loan he used to consolidate his other debts. He has an agreement with the creditor to pay \$250 a month. He began making payments in March 2013 and is up-to-date with his payments. AG ¶ 20(b) applies.

Applicant paid or settled three of the debts alleged in the SOR. He is making payments on the fourth debt. There is no evidence he has received financial counseling, but there are clear indications his financial problems are under control. AG ¶¶ 20 (c) and 20(d) apply.

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):

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- (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 43 years old. He had financial problems when he returned from deployment in 2003 and due to his divorce in 2004. He was steadily employed with a well-paying job from 2006 to 2010. When he lost this job unexpectedly, he again experienced financial difficulties. He paid three of the debts alleged in the SOR. The remaining debt is a loan that he used to consolidate his other debts. He has a payment agreement with the creditor of his fourth debt and is making payments. His 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

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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:	APPLICANT
Subparagraphs 1.a-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. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge