



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



In the matter of:)
)
) ISCR Case No. 11-14453
)
Applicant for Security Clearance)

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: *Pro se*

07/31/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 12, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The 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 by the Department of Defense on September 1, 2006.

Applicant answered the SOR on April 9, 2012, and requested a hearing before an administrative judge. The case was assigned to me on May 11, 2012. DOHA issued a notice of hearing on June 4, 2012, scheduling the hearing for June 21, 2012. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were

admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through L, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant timely submitted documents that were marked AE M through S and admitted without objection. DOHA received the hearing transcript (Tr.) on June 28, 2012.

Findings of Fact

Applicant is a 45-year-old employee of a defense contractor. He has worked for his current employer since 2003. He served in the U.S. military from 1988 until he was honorably discharged in 1992. He seeks to retain his security clearance, which he has held for at least eight years. He attended college for a period but did not obtain a degree. He is married with four children, ages 20, 16, 10, and 6.¹

Applicant's wife lost her job in 2006 and was unemployed for about six months. He was unable to pay all his bills and several debts became delinquent. Applicant and his wife share the responsibility of handling the family finances. He did not monitor his finances close enough. He initially denied owing several debts that he later realized were his responsibility.²

The SOR alleges four delinquent debts with balances totaling about \$27,700 and a past-due \$22,023 second mortgage. Applicant denied all the allegations in his response to the SOR. He also provided reasons for his denials. Individual debts are discussed below.

SOR ¶ 1.a alleges a \$12,524 delinquent debt to a collection company on behalf of a bank. A 2004 credit report shows a current account with the bank that was opened in 2001, with a \$4,621 balance. A 2011 credit report shows a collection account that was opened in June 2008 with a \$12,524 balance. Applicant initially denied responsibility for the debt. He stated that he had several accounts with the bank, but he thought they had been paid. On July 19, 2012, Applicant and the collection company agreed to settle the debt, which had a balance of \$12,584, for \$3,750, payable through a \$3,000 payment and seven monthly payments of \$107. Applicant established that he made the initial \$3,000 payment.³

In February 2012, Applicant and the collection company handling the debt alleged in SOR ¶ 1.b agreed to settle the debt, which had a balance of \$9,861, for \$1,999. The settlement payments were completed on March 30, 2012.⁴

¹ Tr. at 89-90, 93; GE 1.

² Tr. at 24-29, 79-80, 109-110; GE 1, 2; AE K.

³ Tr. at 23-27, 34-39; Applicant's response to SOR; GE 1-6; AE A, M, R.

⁴ Tr. at 40-47; Applicant's response to SOR; GE 2-6; AE B, J.

Applicant and the collection company handling the \$2,952 debt alleged in SOR ¶ 1.c agreed in February 2012 to settle the debt for \$800. The settlement payments were completed on April 3, 2012.⁵

SOR ¶ 1.d. alleges a past-due \$22,023 second mortgage loan. Applicant credibly denied ever having a second mortgage loan with the named creditor. He bought a house in the 1990s for about \$64,000. A May 2004 Experian credit report shows a paid and closed mortgage loan that was opened in 1994, with a credit limit of \$66,800. That report also shows a mortgage loan that was opened in November 2002 for \$80,000, with a \$79,473 balance. The report does not show a second mortgage loan. Applicant sold the house in August 2004 for \$102,000. The settlement statement shows that Applicant's mortgage loan was paid when the house sale closed. There is no mention of a second mortgage loan.

A September 2011 Experian credit report shows a second mortgage loan that was opened in November 2001 for \$20,000, with a date of last action of June 2007. The report lists it as \$20,091 past due, with a balance of \$15,781. Equifax credit reports from February and June 2012 list a delinquent second mortgage loan with a different bank. Those reports show the mortgage loan as opened in November 2001 and a date of last action of July 2007. The balance is listed as \$22,023 in February and \$23,000 in June 2012. Applicant contacted the bank in April 2012 seeking information about the second mortgage loan. The bank sent him a letter dated April 11, 2012, stating that it was investigating the matter, and that it would provide him a response in a timely manner. Applicant did not hear back from the bank. He sent another letter on July 18, 2012.⁶

SOR ¶ 1.e alleges a \$2,421 delinquent debt to a collection company on behalf of a bank. A 2004 credit report shows a current account with the bank that was opened in 1992, with a \$2,076 balance. A 2011 credit report shows a collection account with a \$2,421 balance. Applicant initially denied responsibility for the debt, stating that he did not recall having an account with the bank. On July 2, 2012, Applicant and the collection company agreed to settle the debt, which had a balance of \$4,485, for \$1,189. Applicant paid the \$1,189 settlement amount on July 12, 2012.⁷

Applicant retained a law firm specializing in credit repair, but he has not received formal financial counseling. Applicant was on strike for about seven weeks. He returned to work the week before the hearing. He has a child in college, and his finances were tight while he was on strike. He is back to work, and his wife works a full-time job. He is able to pay his current bills with some left over for savings and emergencies, and he is not accumulating new delinquent debt.⁸

⁵ Tr. at 44-50; Applicant's response to SOR; GE 2-6; AE C, I.

⁶ Tr. at 51-69; Applicant's response to SOR; GE 1-6; AE D, F-H, M, S.

⁷ Tr. at 69-79; Applicant's response to SOR; GE 1-6; AE E, M-P.

⁸ Tr. at 78-90, 111; GE 2-6.

Applicant received the President's Volunteer Service Award in 2011 for his work in his community.⁹

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 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 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."

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 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 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

⁹ Tr. at 92; AE L.

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 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 a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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 provided sufficient evidence to question the validity of the second mortgage loan alleged in SOR ¶ 1.d. AG ¶ 20(e) is applicable to the that debt.

Applicant's wife was unemployed for about six months in 2006. That was beyond his control. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant lost control of his finances. He initially denied owing all the debts in the SOR. I found him to be open and credible about his finances. I am convinced his denials were not attempts to conceal his problems, but were indicative of his failure to have a firm grasp on his finances. He entered into settlement agreements with two of the creditors in February 2012, and the remaining two creditors after his hearing. The settlement payments were completed on three of the debts. He paid \$3,000 toward the settlement of the fourth debt, but he still owes \$750, payable in \$107 monthly installments. I am satisfied that he will maintain those payments. Applicant is back to work after being on strike for seven weeks, and his wife works a full-time job. He is now in the position where he can pay his current bills, and he has a positive cash flow that can be used for savings and emergencies.

Applicant has not received formal financial counseling, but there are clear indications that his financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur. AG ¶ 20(c) is applicable. AG ¶¶ 20(a), 20(b), and 20(d) have minimal applicability because all of the debts were settled recently for less than what was owed, and settlement agreements on two of the debts were not reached until after the hearing.¹⁰

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

¹⁰ The Appeal Board addressed debt settlement in ISCR Case No. 08-12184 at 5 (App. Bd. Jan. 7, 2010):

Applicant's attempts to settle outstanding debts at a reduced amount speaks directly to an evaluation of the good faith nature of Applicant's effort to reduce indebtedness responsibly, given the record evidence of the fact that she had funds available to fully satisfy these debts, and the fact that Applicant's attempts to settle the debts for a lesser amount resulted in their going unpaid.

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.

I considered Applicant's honorable military service. I found him to be honest and candid about his finances. He should have been more proactive about his finances and taken action sooner than he did. I am satisfied that he has learned from the process and those mistakes will not be repeated.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated financial considerations concerns.

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.e:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge