



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



In the matter of:)	
)	
)	ISCR Case No. 11-15147
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: Corey Williams, Esq.

December 5, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 31-year-old employee of a defense contractor. He is alleged to be indebted to 12 creditors in the approximate amount of \$56,709. He also discharged debt through a 2005 Chapter 7 bankruptcy. Applicant mitigated the Financial Considerations security concerns, because his current debts were caused by a vehicular accident in 2010 and nearly a year of unemployment during his recovery. He has acted responsibly with respect to his present debts by repaying one debt and listing the others on his Chapter 7 bankruptcy, which is expected to be fully discharged at the end of January 2014. He has completed financial management classes and lives within his current means. He now maintains health insurance. Eligibility for access to classified information is granted.

Statement of the Case

On July 9, 2013, the Department of Defense 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) effective September 1, 2006.

Applicant answered the SOR on August 2, 2013, and requested a hearing before an administrative judge. The case was assigned to me on September 23, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 23, 2013, scheduling the hearing for October 21, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 8, which were admitted without objection. Applicant offered Exhibits (AE) A through I, which were admitted without objection. Applicant testified on his own behalf. The record was left open for Applicant to submit additional exhibits and on November 27, 2013, Applicant presented AE J through AE R. Department Counsel had no objections to AE J through AE R and they were admitted. DOHA received the transcript of the hearing (Tr.) on October 29, 2013.

Findings of Fact

As stated in the SOR, Applicant is alleged to be indebted to 12 creditors in the approximate amount of \$56,709. Applicant admits each of these debts. His credit reports reflect that each has been past due since approximately 2010. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (GE 3; GE 4; GE 5; GE 6; GE 8.)

Applicant is a 31-year-old employee of a defense contractor. He married in 2009, but separated from his wife shortly after their marriage. They reconciled in February 2011. He has two minor children and custody of his minor nephew. Applicant served in the Navy from April 2003 to March 2010. He achieved the rank of E-4. He was awarded the National Defense Medal; the Good Conduct Award; the Sea Service Deployment Ribbon; the Global War on Terrorism Expeditionary Medal; and the Global War on Terrorism Service Medal during his Navy career. (GE 3; AE L; Tr. 30-31, 39, 73.)

Prior to enlisting in the Navy, Applicant accrued a significant amount of delinquent debt. He attributed his debts to overspending on a girlfriend and being laid-off from his position as a machine operator in a metal shop. He was young and inexperienced with finances at that time. Once in the Navy, his commander and security officer advised Applicant to file Chapter 7 due to his excessive indebtedness. Applicant took their advice and filed Chapter 7 bankruptcy in May 2005. His debts were discharged in September 2005. He testified that from 2005 to 2010 he closely watched his finances, reduced his spending, and only had one credit card. (GE 1; GE 2; GE 3; Tr. 32-35, 53-54, 63.)

Applicant had difficulties on the Navy advancement examination and was not selected for promotion. He was required to separate and was given an honorable discharge. After leaving the Navy, he worked as a personal trainer at a gym while looking for a higher-paying job from June 2010 to September 2010. He had no medical insurance at that time, but was living within his means. (Tr. 48-61.)

In September 2010 Applicant was the victim of a hit-and-run accident when he was forced off the road on his motorcycle by a car. Applicant suffered serious injuries and was airlifted to a nearby hospital. His damages from the accident were not covered by his motorcycle insurance. SOR allegations in subparagraphs 1.b, 1.c, 1.e, and 1.f relate to Applicant's medical bills resulting from this accident. Applicant's employment at the gym was terminated while he was recovering from the accident. He supported himself on state unemployment benefits until June 2011, when he was hired by a government contractor. He was unable to repay these medical bills from September 2010 to June 2011. (Tr. 35-36, 51-65.)

Additionally, because he was unemployed after the accident he could no longer afford to pay for his apartment and other financial obligations. He moved in with his mother to reduce expenses and recuperate. He incurred a cancellation fee for his cable bill (subparagraph 1.d); a past-due cell phone bill (subparagraph 1.g); a delinquent credit card bill (subparagraph 1.h); an overdue land-line bill (subparagraph 1.i); a delinquent on-line account (subparagraph 1.j); and three delinquent loans he took out while still in the Navy (subparagraphs 1.k to 1.m) relating to his truck, his motorcycle, and safety equipment for the motorcycle. He attributes the delinquency of each of these accounts to his accident and resulting unemployment. He testified and the credit reports reflect that all accounts were in good standing until his accident. (Tr. 35-36, 39-47.)

Applicant testified that once he became employed in June 2011, he paid off the debt in subparagraph 1.g. He presented documentation showing this debt was satisfied. He credibly averred that he made small, intermittent payments on the other debts when his resources would allow, but found that with the interest rates, his small payments made no impact on his outstanding debts. In March 2013 he sought the advice of counsel. He asked the attorney to help him negotiate with his creditors. However, the attorney advised him the best option to address his financial delinquencies would be to file Chapter 7 Bankruptcy. Applicant followed the advice of his attorney. (AE O; AE Q; Tr. 42, 61-65, 73-74, 82.)

Applicant addressed each of the remaining 11 delinquent debts listed on the SOR in his Chapter 7 bankruptcy petition filed May 30, 2013. Applicant listed assets totaling \$18,639 and liabilities of \$89,124 in this Chapter 7 petition. A Meeting of Creditors was held on November 22, 2013, and the deadline to Object to Debtor Discharge was set for December 26, 2013. The debts have not yet been discharged, but Applicant's bankruptcy attorney "fully expects that all of [Applicant's] debts will be discharged during the last week of January 2014." (AE G; AE H; AE I; AE P; AE Q; AE R; Tr. 37-38.)

Applicant has actively worked to educate himself on financial matters to avoid future financial problems. He completed two different courses on personal financial management on September 24, 2013, and October 19, 2013, respectively. He created a household budget with the assistance of the credit management courses he participated in, which reflects he will have a monthly surplus of \$970.26 once his debts are discharged. He testified he has learned not to overextend himself. He saves money by

coupons. He lives within his means and maintains vehicle and health insurance. He no longer rides a motorcycle. (AE A; AE M; AE N; Tr. 39, 47, 52, 59, 74-80.)

Applicant presented several letters of support from those that know him best. His current supervisor indicated that Applicant is “a great asset” to their division and “an exemplary employee.” His past supervisor called him the “embodiment of what Honesty, Courage, and Commitment means.” His coworkers find him to be honest and reliable. (AE B; AE C; AE D; AE E; AE F; AE J; AE K.)

Policies

When evaluating an applicant’s suitability for a security clearance, the 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, 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 AG ¶ 2 describing 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, 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 clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally

permissible extrapolation as to 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).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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 was unable to satisfy debts owed to 11 creditors in the approximate amount of \$56,378, as alleged on the SOR. These debts have been past due since 2010. His recent indebtedness comes after discharging an unspecified amount of debt through a 2005 Chapter 7 bankruptcy. The Government established a case for disqualification under Guideline F.

Four Financial Considerations 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.

Applicant meets significant mitigating factors for financial considerations. While his financial difficulties are recent, they occurred as a direct result of Applicant's hit-and-run motorcycle accident and resulting unemployment. He carefully budgets his expenditures and now maintains insurance. His recent financial difficulties occurred due to circumstances that were largely beyond his control and are unlikely to recur. Further, his financial delinquencies do not establish recent poor judgment. Applicant acted responsibly toward his debts after his first bankruptcy discharge in 2005, until the unforeseen accident in 2010. While his accident in 2010 created excessive indebtedness, Applicant has acted responsibly by incurring no further delinquent debts since he was hired in 2011. He was unable, however, to meet the current financial needs of his family on his salary and address his delinquent debts incurred during his medical treatment and unemployment. He sought the advice of an attorney who advised him the best way to address his debts was to file for Chapter 7 bankruptcy. He has followed this attorney's advice and is going through the bankruptcy proceeding now. Under the circumstances, he is acting responsibly. Further, he has received a significant amount of education on how to avoid future debt. Applicant anticipates that he will have a significant amount of money left over after his monthly financial obligations are met once his bankruptcy is discharged. Moreover, bankruptcy is a legally viable option to discharge debt. While Applicant's debts had not been discharged by the close of the record, he has been attempting to resolve his debts, in good faith, through this legally viable option.

Applicant has a distinguished history of acting with honor and valor. He can be trusted to monitor his finances closely and resolve his debts in the future. Applicant has acted responsibly by following the advice of his counsel and educating himself on how to avoid future debt. Applicant's financial problems are under control. AG ¶¶ 20(a), 20(b), 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):

(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 those guidelines, but some warrant additional comment. Applicant is well respected by his supervisors and colleagues. He performs well at his job. His integrity and his military service record show Applicant is trustworthy.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concern.

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
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge