



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



In the matter of:)
)
) ISCR Case No. 12-01783
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: Corey Williams, Esq.

May 20, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 46-year-old employee of a defense contractor. Applicant was alleged to be indebted to four creditors in the approximate amount of \$210,505. He filed a Chapter 13 bankruptcy, which was dismissed in November 2012. His debts were caused by unforeseen circumstances and he has addressed them in good faith as his resources would allow. Eligibility for access to classified information is granted.

Statement of the Case

On November 19, 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 January 13, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on March 3, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 4, 2014, scheduling the hearing for March 27, 2014. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE I) and Exhibits (GE) 1 through 9, and they were admitted without objection. Applicant offered Exhibits (AE) A through EE, which were admitted without objection. Applicant testified on his own behalf. The record was left open for Applicant to submit additional exhibits, and on May 5, 2014, Applicant presented additional exhibits marked AE FF through AE MM. Department Counsel had no objection to AE FF through AE MM, and they were admitted. DOHA received the transcript of the hearing (Tr.) on April 11, 2014.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. He has worked for his employer for seven years. He was a civilian employee of the Navy from 1981 to 2003. He has held a security clearance for 23 years, without incident. Applicant separated from his wife in 2009, and they divorced in 2013. He has custody of his two children, ages five and eight. His ex-wife suffers from borderline personality disorder and does not pay child support. (GE 1; GE 2; AE O; AE II; Tr. 32-43.)

As stated in the SOR, Applicant was alleged to be indebted to four creditors in the approximate amount of \$210,505. He filed a Chapter 13 bankruptcy, which was dismissed in November 2012. Applicant admitted the debts and bankruptcy listed in the SOR subparagraphs with explanations. His debts are found in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 2; GE 3; GE 4; GE 5; GE 6; GE 7; GE 9.)

Applicant attributes his SOR-listed debts to his ex-wife's medical condition, their divorce, and an economic downturn in the housing market. Prior to Applicant's ex-wife's diagnosis, he had a credit rating score of 750 and had only had one late payment in the preceding 15 years. When his wife became ill in the mid-2000s, she was hospitalized and Applicant incurred additional expenses. After her hospitalization, she was unable to work, which resulted in less family income. She was unable to watch their children and Applicant had to find costly part-time day care. It was during that struggle that Applicant's wife requested a divorce. At the same time, the economy slowed and Applicant's property declined significantly in value, while his interest rates escalated. Applicant self-reported his financial difficulties to his Facility Security Officer in November 2010. (GE 8; Tr. 44-45.)

Applicant filed Chapter 13 bankruptcy in November 2012. Applicant filed bankruptcy on the advice of his attorney to halt a foreclosure sale of his primary residence until a modification of the mortgage could be established. The bankruptcy was dismissed shortly after it was filed and a stay had been issued on the foreclosure sale. The mortgage is addressed in more detail, below. (AE Q; AE V; Tr. 60-66.)

Applicant is indebted on a student loan in the amount of \$14,012. Applicant incurred this debt by co-signing a student loan for his former wife. In their divorce, his ex-wife agreed to pay her debt. However, she stopped paying on her loan. Applicant contacted this creditor in September 2013 and established payment arrangements. Per the agreement, he made a first payment of \$1,000 in September 2013 and has made monthly payments of \$100 to this creditor since then. This debt is being resolved. (GE 2; AE A; AE B; AE C; AE N; AE O; AE Q; AE EE; Tr. 48-52, 74-75.)

Applicant is delinquent on his primary residence mortgage in the amount of approximately \$67,000. Applicant purchased this property in 2007 for \$672,000, prior to his wife's illness or marital problems. He financed \$604,800 of the purchase price by obtaining a mortgage with this creditor. The real estate market declined shortly after he purchased the home. He estimated its current value to be approximately \$450,000. Applicant attempted to negotiate affordable payments, but the bank was not willing to modify the loan to a payment he could afford. He hired a law firm to negotiate modified payments with the creditor and he also filed a suit against the creditor for unfair and unlawful lending and borrowing practices. The law suit is pending but will be dismissed when a settlement is reached. On May 5, 2014, Applicant presented a letter from his attorney that indicated Applicant was offered a modification "of a lowered principal balance of \$530,507.93, a 40-year maturity term, a 4.875% interest rate, a principal and interest payment of \$2,514.33 per month, plus taxes and insurance of \$828.51 per month." Further, if Applicant "successfully makes the payments under the modification for three (3) years, the deferred unpaid principal amount of \$227,370.54 will be forgiven." Applicant created a new budget that showed he could afford this payment plan and will have a small surplus left over at the end of the month. The letter from his attorney indicated Applicant accepted the settlement agreement and would be making his first payment May 1, 2014. Applicant did not submit proof he made a payment according to the agreement. (GE 2; GE 4; AE H; AE I; AE J; AE K; AE L; AE M; AE Q; AE DD; AE KK; AE LL; AE MM; Tr. 66-68, 86-90.)

Applicant is indebted in the approximate amount of \$8,493 for a vehicle that was repossessed after he missed a couple of payments. Applicant worked out a payment agreement of \$100 per month until this debt is satisfied as documented in a letter from this creditor. He made his first payment in September 2013 and is current on his payment agreement. This debt is being resolved. (GE 2; AE D; AE E; AE Q; AE R; AE Y; AE Z; Tr. 52-57.)

Applicant is indebted in the approximate amount of \$121,000 for a second mortgage on a former residence. He purchased that property in 1996 for \$170,000. After Applicant moved, he rented it to tenants. Applicant refinanced this property several times. He owed \$480,000 on the primary mortgage and \$121,000 on the second mortgage. The second mortgage had an adjustable rate and, when the interest rate adjusted, Applicant was not able to make his payments. He attempted to short sell the property, but the home was foreclosed upon by the bank. The second mortgage became an unsecured debt. However, when Applicant inquired into making payments on this debt, he received a letter from the creditor stating the debt was "a paid settlement." He also received at 1099-C, cancellation of debt, stating that the creditor

discharged \$115,975.17 of debt. This debt is resolved. (GE 2; AE F; AE R; Tr. 57-60, 78-79, 86-89.)

Applicant's credit report dated March 24, 2014, identified an additional delinquent debt of \$2,600 owed on an installment loan, which was not identified on the SOR. Applicant testified that he paid this debt on September 26, 2013. He provided documentation showing the account was settled. Applicant also has a federal tax liability of approximately \$25,000 from tax years 2010 through 2012. He has an installment agreement with the IRS and makes monthly payments of \$350. He began making payments to the IRS on this debt in July 2012 and is current on the payments. Since his divorce, he has resolved eight other debts that had been delinquent. He testified he is committed to satisfy all remaining financial obligations. (AE U; AE W; AE FF; AE GG; AE HH; Tr. 84-85, 93.)

Applicant completed six on-line financial-counseling courses on May 4, 2014. He provided certificates of completion and a three-page outline of the lessons he learned from the courses as part of his post-hearing documentation. He wrote, in part:

The main point I learned from this training is to live within your means. In order to do this, you have to constantly work on a budget that includes all expenditures and incomes. Another important item to include in your budget is to save for emergencies. This way where there is some additional unforeseen expense, you can take it out of this fund so there would be no need to obtain additional credit. I learned the importance of borrowing and the total cost of the loan. Lastly, working to clean up and improve your credit rating will save me money with respect to lower interest payments and fees. (AE JJ.)

Applicant presented two letters of recommendation. They attest to Applicant's good character and praise him for his dedication. A letter from his pastor indicates Applicant is a "man of integrity, dedication, wisdom, and goodness." (AE P.)

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:

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.

The SOR alleges that Applicant incurred approximately \$210,505 in delinquent debt. The debts have been delinquent since at least 2010. In 2012, he filed a Chapter 13 bankruptcy to stay a foreclosure action on his residence. While Applicant is making payments on the repossessed vehicle and his ex-wife's student loan, in its entirety, the Government has established its *prima facie* case against Applicant. The evidence shows Applicant's "inability or unwillingness to satisfy" his mortgage debt. He has an overall "history of not meeting financial obligations."

Four Financial Considerations mitigating conditions under AG ¶ 20 were considered, and found applicable, including:

- (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's ex-wife's medical condition, an unexpected divorce, and the economic downturn in the real estate market were events beyond Applicant's control, which contributed to his financial difficulties. They are unlikely to recur. He is addressing all four debts identified on the SOR. He is making payments on two of the debts and intends to satisfy both; one unsecured mortgage debt has been forgiven by the creditor; and he has recently reached a settlement agreement on the primary mortgage for his current residence. After many years of negotiation with the lender, his attorney has negotiated a monthly payment that he can afford. Applicant is acting responsibly, under the circumstances. He also satisfied or made payment arrangements with a number of other creditors not alleged on the SOR. While he offered no documentation to establish he made his first payment on the settlement offer from his primary mortgage holder, he has a documented history of following through on his recent repayment agreements. His actions show responsibility in addressing his delinquencies and give clear indications that his financial problems are being resolved or are under control. He actively

addressed each of his debts in good faith, as his circumstances would allow. He was honest and upfront with the government about his delinquencies. Further, he has participated in financial counseling classes that will help him budget for emergencies in the future.

The Appeal Board has held, “A security clearance adjudication is not a proceeding aimed at collecting an applicant’s personal debts. Rather, it is a proceeding aimed at evaluating an applicant’s judgment, reliability, and trustworthiness.”¹ Security clearance adjudications regarding financial issues are not debt collection proceedings. The purpose is to make “an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk.”² Applicant’s financial circumstances do not cast doubt on his current reliability, trustworthiness, or good judgment. The facts established by the evidence under AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are mitigating.

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 well respected by his colleague and pastor, who wrote letters in his support. He performs well at his job. He has never had a security violation, though he has held a clearance for over 20 years. He responsibly reported his financial delinquencies to his facility security officer as the debts were becoming delinquent. His financial difficulties are attributable to a series of events that he could not control. He has acted responsibly by negotiating settlements and actively engaging his creditors to resolve his debts, demonstrating a

¹ ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003).

² AG ¶ 2(a)

commitment to managing his finances. There is little likelihood of recurrence, or potential for coercion.

Overall, the record evidence leaves me without questions or 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 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
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

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