



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



In the matter of:)
)
) ISCR Case No. 12-01770
)
Applicant for Security Clearance)

Appearances

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

10/28/2013

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

On June 12, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This 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 on September 1, 2006.

On July 1, 2013, Applicant answered the SOR and requested a hearing. The case was assigned to me on August 9, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 28, 2013, and the hearing was convened as scheduled on September 13, 2013. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 4 that were admitted into evidence

without objection. Applicant testified, offered no exhibits, and called no witnesses. The record was left open until October 1, 2013, to provide Applicant an opportunity to submit additional matters. He timely submitted documents that were marked as Applicant's Exhibits (AE) A through F and admitted into evidence without objection. Department Counsel's email forwarding Applicant's post-hearing submission was marked as Hearing Exhibit (HE) 1. DOHA received the hearing transcript (Tr.) on September 23, 2013.

Procedural Matters

At the hearing, Applicant affirmatively waived the 15-day notice requirement in Paragraph E3.1.8 of the Directive.¹

Findings of Fact

Applicant is a 41-year-old employee of a defense contractor. He has been working for his current employer in Afghanistan since March 2010. He graduated from high school in 1991, earned an associate's degree in 2004, and earned a bachelor's degree in 2006. He married in 1994 and divorced in 2010. He has two children, a son 18 years old and daughter 16 years old. He has held a security clearance in the past without incident.²

The SOR alleged that Applicant had seven delinquent debts, totaling \$52,196. Four of those debts, totaling \$51,556, are student loans. In his Answer to the SOR, Applicant admitted each debt with comments. His admissions are incorporated as findings of fact.³

Applicant worked in Iraq from July 2006 to November 2009. During that period, he owned a house in the United States. In about 2008, he and his wife decided to build a second house in the same metropolitan area as the first home. They moved into the second house and initially rented the first house. In 2008, Applicant learned that his wife was having an affair. They separated and she moved back into the first house. She failed to make the mortgage payments on the first house for about a year and a half. The first house was eventually disposed of in a short sale. They divorced in May 2010. Applicant acquired the second house and indicated that he has not been delinquent on its mortgage payments for the past two years.⁴

While working in Iraq in October 2009, Applicant was disciplined following a disagreement with a supervisor over the use of a restroom facility. Following that incident, a Human Resources Review Board decided to terminate Applicant's

¹ Tr. at 13-15.

² Tr. at 6-7, 39-43; GE 1, 2.

³ Applicant's Answer to the SOR.

⁴ Tr. at 31-43, 50-56, 84-86; GE 1, 2.

employment, but gave him the option of resigning in lieu of termination. He chose the resignation. In his Electronic Questionnaire for Investigations Processing (e-QIP), he acknowledged that his marital problems had affected his work performance and his attitude. Following his resignation, he was unemployed or underemployed until he obtained his current job in March 2010.⁵

SOR ¶¶ 1.a and 1.b – unpaid medical debts of \$33 and \$458. These debts were placed for collection in April and June 2009. Both debts had the same account number. Applicant testified that both debts were paid on May 1, 2013. In his post-hearing submission, he provided a bank record showing that he made a payment of \$491 (the combined total of both debts) on that date. These debts are resolved.⁶

SOR ¶ 1.c – student loan placed for collection for \$2,244. This debt had a date of first delinquency/date of last activity of November 2009. At the hearing, Applicant testified that he paid this student loan. In post-hearing submission, he provided a bank record showing he made student loan payments of \$500 and \$1,662 in August 2013 to a state student loan program. This debt is being resolved.⁷

SOR ¶¶ 1.d, and 1.e – student loans placed for collection for \$2,483 and \$5,829. These debts had dates of first delinquency/dates of last activity of October 2008 and November 2009. Applicant testified that these two student loans were consolidated by a collection company and that he had been making payments of \$100 toward them for a number of months. In his post-hearing submission, he provided a bank record showing these debts are being resolved. The bank record reflected the following payments to the creditor:⁸

July 17, 2012	\$100
August 6, 2012	\$100
August 23, 2012	\$100
September 17, 2012	\$100
October 16, 2012	\$100
November 16, 2012	\$100
December 17, 2012	\$100
January 18, 2013	\$100
February 19, 2013	\$100
March 18, 2013	\$100
April 15, 2013	\$1,500
April 16, 2013	\$100
May 15, 2013	\$1,000

⁵ Tr. at 45-48; GE 1, 2.

⁶ Tr. at 64-67; Applicant's Answer to the SOR; GE 3, 4; AE D.

⁷ Tr. at 44-45; 57-61, 67-68, 81-82; GE 3, 4; AE A.

⁸ Tr. at 44-45, 62-63, 68-69; Applicant's Answer to the SOR; GE 3, 4; AE C.

May 16, 2013	\$100
June 17, 2013	\$100
July 17, 2013	\$100
Total	\$3,900

SOR ¶ 1.f – student loan placed for collection for \$41,000. This debt had a date of first delinquency/date of last activity of October 2008. Applicant testified that he had been making monthly payments to rehabilitate this loan. In his post-hearing submission, he provided a bank record showing that he made monthly payments of \$208 from March to August 2013. This debt is being resolved.⁹

SOR ¶ 1.g – account placed for collection for \$149. This was a cable television debt. Applicant testified that he paid this debt. He also noted that it no longer appears on his credit reports. None of the credit reports admitted into evidence listed this debt. This debt is resolved.¹⁰

Applicant testified that he has not received financial counseling. In a personal financial statement submitted in May 2013, he indicated that he had a net monthly income of \$11,384, that he had monthly expenses of \$2,936, and that he had monthly debt payments of \$2,749, which left him a net monthly remainder of \$5,699. He also listed that his total assets were \$266,000, which included \$30,000 in bank savings, \$1,000 in stocks/bonds, and the value of his car and house.¹¹

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 that 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.

⁹ Tr. at 44-45, 56-60, 69-70, 76, 82-83; Applicant’s Answer to the SOR; GE 3, 4; AE B.

¹⁰ Tr. at 70-71; Applicant’s Answer to the SOR; GE 3, 4.

¹¹ Tr. at 75-81; GE 2.

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 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 about 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* Executive Order 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 accumulated delinquent debts that he was unable or unwilling to pay for an extended period. This evidence is sufficient to raise the above disqualifying conditions.

Several 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 encountered marital difficulties in 2008 and obtained a divorce in 2010. His marital difficulties were a condition beyond his control that contributed to his financial problems. Since March 2010, he has taken steps to rehabilitate his student loans and pay his other debts. He has submitted sufficient evidence to establish that his financial problems are being resolved and are under control. He understands the importance of paying his debts in a timely manner and these problems are unlikely to recur. AG ¶ 20(c) fully applies and AG ¶¶ 20(a), 20(b), and 20(d) partially 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines 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 has served with the U.S. military in Iraq and Afghanistan. He was open and forthcoming during the hearing. He is on track to resolve his financial problems, and it is unlikely that they will recur. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns under the financial considerations guideline.

Formal Findings

Formal findings 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.g:	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.

James F. Duffy
Administrative Judge