



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



In the matter of:)	
)	
-----)	ISCR Case No. 12-02060
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

03/06/2014

Decision

MARSHALL, Jr., Arthur E., 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

The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), dated August 22, 2013, 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 a September 25, 2013, response to the SOR, Applicant admitted responsibility for nine of the 21 allegations referenced in the SOR and requested a hearing before an administrative judge. The case was assigned to me on November 12, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 13, 2013, setting the hearing for December 10, 2013. Due to inclement weather, the hearing was rescheduled for January 14, 2014.

The hearing was convened as scheduled. The Government moved to amend the SOR by adding subparagraph 1.v and subparagraph 1.w to the SOR as additional allegations. Applicant admitted the new allegation and the Government's motion was granted without objection. The Government then offered Exhibits (GX) 1-5 and one Demonstrative Exhibit (DE). They also were accepted without objection. Applicant offered testimony and Exhibits (AX) A-F. He was given until February 4, 2014, to submit any additional materials. The transcript of the proceeding was received on January 22, 2014. On February 5, 2014, Department Counsel forwarded four packets of supplemental material from Applicant, which were accepted into the record without objection as Exs. G-J. The record was then closed.

Findings of Fact

Applicant is a 33-year-old network security analyst who has worked for his current employer for about one year. He served in the National Guard from 2000 to 2006, when he was honorably discharged. Applicant has an associate's degree and multiple certifications in information technology (IT). He is single and has no children.

Starting in the late 2000s, Applicant began experiencing gastrointestinal problems. Those problems worsened in 2009. By 2010, his symptoms became severe and he spent months actively seeking medical attention, during which time he lost 40 pounds and was unable to work for several months. Applicant lacked medical insurance at the time. He was eventually diagnosed as suffering from a severe case of Crohn's Disease. His condition improved enough that he was able to return to work for a period of time. The illness worsened in 2011, however, and he was unable to work from about May 2011 to October 2011. During this last bout of incapacity, he received "a small amount of unemployment [compensation]," lived frugally, stayed with his mother, completed some IT certifications, and aggressively sought treatment for his condition by "going through different medications and seeing what works." (Tr. 31) Although he was still ill, he was able to begin his current job about 11 months ago, where he was provided with health insurance. (Tr. 32-33) His symptoms are now under control and he has had no significant difficulty resuming a regular work schedule.

A significant number of the 23 financially-related allegations noted in the SOR are related to medical services or debts incurred while Applicant was medically impaired and unemployed. The most notable exception is the debt set forth at 1.g. The debts at issue are:

1.a – 1.c - Medical - \$576, \$2,058, \$373. *Paid.* Tr. 34-36.

1.d – Utility - \$86. *Paid.* Tr. 36; Answer to the SOR at 11.

1.e – 1.f - Medical/Hospital - \$10,416, \$11,084. *Completing settlement negotiations.* These debts were for emergency room visits in 2010, before Applicant was diagnosed with Crohn's Disease and while he lacked health insurance. He tried to negotiate with the collection agency in 2011, but was told the hospital did not negotiate balances. Tr.

40. Applicant persisted. When approached, the hospital was open to his attempts to work with it directly. Tr. 40-41. Since returning to work full time, he has been actively engaged in negotiating a settlement with this health provider. Tr. 38-39, 42; AX B. He is waiting for the hospital to review its charges and his materials. In the interim, he has been addressing his smaller debts. Tr. 39-40. After the hearing, Applicant showed that he is currently completing forms from the hospital to facilitate a payoff of the debts. Ex. H.

1.g – Apartment lease balance - \$5,672. *Unpaid*. In about 2008, unbeknownst to Applicant, a roommate ceased paying her portion of their rent. Shortly thereafter, Applicant notified the apartment complex that he was moving, still unaware of his roommate's financial issues. Shortly after he moved, with the understanding that his roommate would continue in the rental unit for the duration of their lease, he discovered his roommate had abandoned the apartment. He approached her to honor at least half the debt thus incurred for the balance owed on the lease, but to no avail. Tr. 47-48; Ex. C. The collection agent will not negotiate with Applicant or divide the balance between the two former roommates. At present, the full balance is reflected on both their credit reports. Applicant has intentionally dropped this debt to the bottom of his priorities because he does not want to "benefit her credit report, when I have other stuff that I can lean towards (satisfying) as far as like the two huge medical accounts (noted at 1.e-1.f)." Tr. 48.

1.h – Telecommunication - \$571. *Paid*. Tr. 50; Answer to the SOR at 21.

1.i – Military overpayment - \$334. *Paid*. Tr. 50-51; AX A at 3.

1.j – Telecommunication - \$638. *Successfully disputed*. Applicant denied ever having subscribed to the service at issue and disputed the matter with the credit reporting agencies. It was removed from his credit report in less than seven years. (Tr.52-54)

1.k – Collection - \$711. *Successfully disputed*. This 2011 collection effort was disputed by Applicant and has since been removed from Applicant's credit report. Tr. 55.

1.l – College bookstore account - \$423. *Paid*. This account no longer appears on Applicant's credit report. He provided evidence of payment after the hearing. AX I.

1.m – Collection - \$285. *Paid*. Applicant has consistently represented that this debt was repaid over a year ago. It is no longer on his credit report. Tr. 57-58.

1.n, 1.p - Medical - \$478, \$159. *Paid*. These debts have been addressed and no longer appear on Applicant's credit report. Tr. 58-59.

1.o – Insurance - \$136. *Paid*. Tr. 59.

1.q – Tax Year (TY) 2006 balance - \$1,419.75. *Revised as 1.v for \$1,589*.

1.r -1.w – Federal and state tax issues. *Late filings submitted/balances in repayment.* Applicant failed to timely file federal tax returns for TY 2007 through 2009, and state tax returns for TY 2007 through 2011. They have since been filed. Tr. 59-60. The taxes went unfiled because he lacked sufficient funds to address his tax debts while underemployed as an independent contractor. Applicant owes the IRS \$1,589 for TY 2006, \$3,047 for TY 2007, and \$1,685 for TY 2010. In sum for TY 2006 through 2010, Applicant owes the IRS about \$10,000. Tr. 61-62. At least half of that sum is for fees. Applicant is currently working with the IRS to reduce the sum owed or waive the fees. Tr. 62. He is in a repayment plan with the IRS and presented evidence of four timely monthly payments. Tr. 62-63; AX D, AX G. Payments currently consist of \$200 a month, pending calculation of the adjusted total owed. He is similarly working with his state to resolve his state tax issues. State tax returns for TY 2007 through 2011 all have been filed. He is awaiting a final calculation on any sum owed to the state. At present, it appears his outstanding balance is \$436 from TY 2006. Tr. 66-67; SOR at 1.t.

As noted, Applicant’s plan has been to satisfy his smaller debts while awaiting progress on his negotiations with the hospital for his larger medical bills. He has adhered to that plan successfully. The vast majority of the debts are related to his illness and two periods of unemployment. He maintained contact with many of his creditors during his periods of physical and financial distress, and has since made contact with the creditors involved in all his undisputed debts.

Applicant’s disputed debts have been removed from his credit report. He has made notable progress on his other debts since returning to work full-time. He currently lives within his means. His tax repayment plans are reasonable. He has sufficient cash reserves to make payments toward any remaining tax balances owed and the final balances deemed owed for hospitalizations. He maintains a budget and has a net monthly remainder of about \$750. He has been regularly applying any such remainders toward his remaining debts. Applicant consciously avoided declaring bankruptcy in order to honor his debts. His credit score has recently risen by about 140 points due to his efforts to address his delinquent debts and repair his credit. Tr. 75

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 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.

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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has delinquent debts and notable tax issues, including failure to timely file tax returns. This is sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts,

AG ¶ 19(c): a history of not meeting financial obligations, and

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Five conditions could mitigate the finance-related security concerns in this case:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

With the exception of the apartment-related obligation noted at SOR § 1.g, the non-tax debts at issue are directly related to either Applicant's illness or his periods of unemployment caused by that illness. Throughout his battle with Crohn's Disease, he kept abreast of his financial situation, lived frugally, and stayed with his mother. During his periods of illness and financial distress, he worked with a number of his creditors and successfully disputed some erroneous entries on his credit report. Since returning to full health and to his work last year, he has systematically started paying off his delinquent debts to the point where he has satisfied all 15 of the non-tax obligations at issue, except for the two largest debts (1.e and 1.f), regarding which he is currently in settlement negotiations, and the apartment-related debt (1.g). He has shown that he has the commitment and financial resources to continue addressing his remaining delinquent debts. As for his tax issues, all his needed tax filings have been made, and he is working with both his state and the IRS to resolve any outstanding balances. Consequently, I find that mitigating conditions AG ¶ 20(c)-(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). 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 emphasis or additional comment.

Applicant is a 33-year-old network security analyst who has worked for his current employer for nearly one year. He served in the National Guard from 2000 to 2006, earned an associate's degree and multiple certifications in IT, and is single. In the late 2000s, he was plagued by severe gastrointestinal problems which went undiagnosed for a protracted period of time, adversely impacting his ability to work. By the time he was diagnosed with Crohn's Disease, he had missed several months of work in 2010 and incurred numerous medical bills while lacking health insurance. He again missed months of work when his condition flared up for about half of 2011. During this time, and given his limited income, he worked as best he could with his creditors. After appropriate treatment, he was able to return to work full-time about a year ago.

Since that time, Applicant has diligently addressed his delinquent debts by paying off his smaller debts, while negotiating for settlement on his two largest debts, which were related to his hospital care while he was uninsured. He has filed tax returns for the past tax years for which he previously neglected to file due to lack of income or savings. He is currently working with both his state and the IRS to resolve his tax issues and to determine what, if any, financial obligations are yet owed.

This process does not demand that an Applicant satisfy all debts at issue. It only requires that an Applicant develop a reasonable plan for addressing his debts and related issues, and provide evidence that the plan has been successfully implemented. Here, Applicant has met this standard by articulating his plan, showing how it has been implemented, demonstrating significant progress on his debts, and detailing his candid workings with both state and federal tax authorities. He has also showed that he has the financial resources, personal commitment, and renewed health to satisfy any additional balances determined to be owed. Applicant has mitigated financial considerations security concerns. Clearance is granted.

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.u:	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.

Arthur E. Marshall, Jr.
Administrative Judge