



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-03259
)
Applicant for Security Clearance)

Appearances

For Government: Philip Katauskas, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

02/06/2014

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Statement of the Case

On October 26, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) issued Applicant interrogatories to clarify information in his background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOD could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated August 15, 2013, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on September 24, 2013, denying allegations 1.a, and 1.c with explanation. In denying these debts, he admitted he owed the debts but disputed the amount of the debts and stated that the debts were included in a bankruptcy filing. He admitted allegations 1.b, and 1.d with explanation. Department Counsel was prepared to proceed on October 17, 2013, and the case was assigned to me on October 22, 2013. DOD issued a Notice of Hearing on November 21, 2013, scheduling a hearing for December 19, 2013. I convened the hearing as scheduled. The Government offered four exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant testified and offered ten exhibits that I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through J. I left the record open for Applicant to submit additional documents. Applicant timely submitted two additional documents I marked and admitted into the record without objection as App. Ex. K and L. I received the transcript of the hearing (Tr.) on January 3, 2014.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 49 years old. He was born in Ghana, came to the United States to pursue his education in 1991, and became a United States citizen in July 1999. He received an associate's degree in information systems in 1994. Applicant is married but separated. He has three sons, ages 11, 15, and 18. The 18-year-old lives with him and the other sons live with their mother. Applicant has worked for his defense contractor employer for over eight years, and has held a security clearance during his employment. His current annual salary is approximately \$72,000. His monthly income is \$4,550.72 (App. Ex. B, Bankruptcy Schedule I), with monthly expenses of \$3,755.25 (App. Ex. C, Bankruptcy Schedule J). The monthly expenses do not include monthly Chapter 13 bankruptcy payments of \$795. Including the bankruptcy payments, Applicant has little monthly discretionary income. (Tr. 10-13, 34-36; App. Ex. J, Applicant's Statement, undated)

The SOR alleges and credit reports of November 22, 2011, and June 28, 2013, establish the following delinquent debts: a charged off credit card debt of \$5,637 (SOR 1.a); a debt on an automobile lease charged off for \$10,955 (SOR 1.b); a debt for an automobile loan past due for \$1,741 with a balance of \$17,038 (SOR 1.c); and a mortgage loan past due for \$11,346, with a total loan balance of \$523,000 (SOR 1.d). The total delinquent debt is approximately \$29,679. (Tr. 13)

Applicant's father, who lived in Ghana, became sick in approximately 2010, and passed away from cancer in September 2012. Applicant used a credit card to pay travel expenses to visit his father as well as to assist paying his father's medical expenses. After the death of his father, Applicant himself became ill and was out of work for two months. His ability to pay his debts was affected by the expenses incurred to see and care for his father. He missed some credit card payments and the credit card became a delinquent debt (SOR 1.a). (Tr. 24-25)

Applicant's wife leased a car that she turned in early when she and Applicant separated. The early termination of the lease resulted in a penalty and the debt at SOR 1.b. Since Applicant had signed the lease, he is responsible to the creditor for the debt. (Tr. 25)

The debt at SOR 1.c is for the loan on Applicant's car. He was unable to meet the payment obligations when his father became ill and he used some of his financial resources to travel to see and care for his father. He returned the car to the dealer, and is using an older car that he owns. This action kept his bankruptcy plan payments at an amount within his means. (Tr. 25-27; App. Ex. K, Bankruptcy Attorney Letter, dated December 27, 2013)

The debt at SOR 1.d pertains to a house he and his wife jointly owned prior to their separation. Applicant had a short sale of the house approved, but before it could be completed, the mortgage holder sold the debt. The new debt holder would not agree to the short sale. Applicant's wife later decided that she wanted to keep the house. Applicant has completed a quit claim deed relinquishing all rights and responsibilities for the house or the mortgage. He has no further liability for the mortgage. (Tr. 27-29; App. Ex L, Deed of Gift, dated December 13, 2013)

Applicant filed a Chapter 13 bankruptcy action in October 2013. The payment plan has been approved. He paid \$545 monthly for three months: October, November, and December 2013. The monthly bankruptcy plan payments are now \$795. The payments were to increase to \$1,185 monthly in a year, but the plan has been modified to keep the payments at \$795 per month. There are seven debts to be paid in the bankruptcy plan and include the debts alleged in the SOR. Applicant is current with his payments. Applicant's latest credit report only lists the delinquent debts that are noted in the SOR and included in the Chapter 13 Bankruptcy. (Tr. 21-22; App. Ex. A, Bankruptcy documents, dated November 20, 2013; App. Ex. D, Trustee's Statement, dated November 11, 2013; App. Ex. E, Credit Report, dated September 24, 2013; App. Ex. K, Bankruptcy Attorney Letter, dated December 27, 2013)

Applicant presented letters of recommendation. One of Applicant's supervisors wrote that she has known Applicant for almost two years. She considers Applicant to be competent and conscientious. He is highly regarded by all customers and managers. He has done an outstanding job in a stressful and demanding environment. She considers Applicant to be honest and trustworthy. He demonstrates integrity on a daily basis. She recommends that he be granted access to classified information. (App. Ex. F, Letter, dated December 16, 2013)

Another of Applicant's supervisors wrote that he has known Applicant for over four years. Applicant was a senior systems engineer supporting a major military contract. He mentored and trained junior engineers. He considers Applicant to be intelligent, capable, dedicated, and personable. He recommends that Applicant be granted access to classified information. (App. Ex. G, Letter, dated December 16, 2013)

Applicant's wife wrote that she has known Applicant for over 22 years, but they recently reached an amicable decision to separate. They are working together to resolve financial issues. Applicant signed the quit claim deed to provide her with sole ownership of the house. Even though they are separated, Applicant is in constant contact with his sons and is well aware of the progress in their lives. (App. Ex. H, Letter, dated December 15, 2013)

A friend wrote that she has known Applicant for over five years. He has assisted her with caring for her mother and family. Applicant is intelligent, honest, diligent, and professional. He is thoughtful and mature. She recommends he be granted access to classified information. (App. Ex. I, Letter, date undated)

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 must be considered 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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking 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 that the applicant may deliberately or inadvertently fail to 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.

Analysis

Financial Considerations

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. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's self-responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Credit reports show four delinquent debts including a mortgage debt, two debts on automobiles leases or loans, and a charged off credit card debt. Applicant admits the debts even though he denied the amount of the debt. The delinquent debt raises Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence shows a history of an inability to satisfy the debt.

I considered Financial Considerations Mitigating Conditions 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); and AG ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions apply.

The debts were incurred because Applicant had expenses to visit and care for his ill father who lived in the country of Applicant's birth. He used a credit card to pay for his father's medical expenses and his travels to see his father. After his father passed

away in September 2012, Applicant became ill and was out of work for two months. He was unable to meet all of his financial obligations and his credit card payments, car loans, and mortgage became delinquent. The requirement for Applicant to care for and visit his father is not a frequent or recurring problem. The conditions that caused the debts to be delinquent were beyond his control, are unusual, and are unlikely to recur. Applicant acted reasonably and responsibly in attempting to resolve the debts. He filed a Chapter 13 bankruptcy, restructured the payment plan for more favorable payments considering his finances, and is current with payments under the plan. He divested himself of the mortgage obligation by entering a quit claim deed of gift. He turned in his expensive car and now drives one that does not have a car loan. All of his debts are included in the Chapter 13 bankruptcy plan. Bankruptcy is a legal and permissible means of managing debt. There is no evidence of irresponsible behavior, poor judgment, or unreliable conduct by Applicant.

I also considered Financial Consideration Mitigating Condition 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). Applicant attended the required financial counseling when he filed his Chapter 13 bankruptcy. As noted, there are clear indications that the problem is being resolved or is under control.

I also considered AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. Good-faith means acting in a way that shows reasonableness, prudence, and honest adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts.

Applicant demonstrated his good-faith in trying to resolve the debt. He filed a Chapter 13 Bankruptcy and his debts are being paid under the bankruptcy plan. He established a "meaningful track record" of debt payments by restructuring his debts to keep the bankruptcy plan within his financial resources and by being current with his payments to the plan. He has the financial ability to continue to make payments on the plan. His actions concerning his debts are reasonable, prudent, and an honest adherence to his financial obligations. His present and past management of his finances reflects favorably on his trustworthiness, honesty, and good judgment. Based on all of the financial information available, I conclude that Applicant mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 considered Applicant's eight years of service with his employer while having access to classified information. I considered the opinions of his supervisors, friends, and others as to his hard work, honest, integrity, and devotion to duty.

Applicant presented sufficient information to establish that he acted reasonably and responsibly towards his delinquent debts. He filed a Chapter 13 bankruptcy and included all of his delinquent debt in the payment plan. He divested himself of some of his financial obligations to keep the payment plan within his means. He is current with his payments under the plan. Applicant is not required to be debt-free or pay off all debt immediately. All that is required is that he act responsibly under the circumstances, develop a reasonable plan to repay the debt, and show a serious intent to effectuate the plan. In sum, Applicant has taken reasonable action to resolve the debt and maintain his financial responsibility. His past financial track record provides confidence that he will continue to make payments on the debt. His responsible management of his financial obligations indicates he will be concerned and act responsibly in regard to classified information. Overall, the record evidence leaves me without questions and doubts as to Applicant's judgment, reliability, trustworthiness, and his eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information 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.d:	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.

THOMAS M. CREAN
Administrative Judge