



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



In the matter of:)
)
) ISCR Case No. 12-09080
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/22/2017

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He had a judgment and four delinquent accounts. The majority of the delinquent was home mortgage related, which has been fully forgiven. His wife's job loss and chronic medical illness contributed to his financial problems. Applicant has mitigated the financial considerations security concerns. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on June 12, 2015, the DoD issued a Statement of Reasons (SOR) detailing security concerns. On July 15, 2015, Applicant answered the SOR and elected to have the matter decided without a

¹ 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 within the DoD on September 1, 2006.

hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated November 10, 2015. The FORM contained six attachments (Items). Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. On February 8, 2016, Applicant responded to the FORM. DC had no objection to the material submitted, and it was admitted as Item A. On February 8, 2016, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he asserted he had paid the judgment (SOR 1.e), a charged-off account (SOR 1.d), and was making monthly payments on another delinquent account (SOR 1.f). He admitted the remaining debts. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 72-year-old crane operator who has worked for a defense contractor since May 1980. He is seeking to retain a secret clearance. From January 1966 to January 1972, he served in the U.S. Army during the Viet Nam war. He is married and is raising his 16-year-old grandson. In 2009, he and his wife's adjusted gross income was approximately \$133,000. (Item A) In 2010, his wife lost her job and went on unemployment. Her weekly income went from \$1,100 to \$60 per week. (Item 4, page 6) After two years, her unemployment payments ended. In 2012, his wife suffered a seizure. (Item A) His wife then age 56, applied for social security disability payments, but the record is silent whether payments have been granted. He also experienced \$25,000 in flood damage to his property. (Item A)

In 1996, Applicant purchased a home. The mortgage note was held by a series of mortgage lenders including the lenders in SOR 1.a (\$14,082 past due) and SOR 1.b (\$61,845 past due). There was also a second mortgage on the home (SOR 1.c, \$3,819 past due). Normally, when a mortgage note transfers from one lender to the next holder in due course, the previous lender rights to collect on the mortgage note ends. In January 2014, Applicant made his most recent payment on the second mortgage. (Item 6, page 3) In August 2015, he made his most recent payment on the first mortgage. (Item 6, page 2)

On April 24, 2015, the most recent holder of the mortgage note (SOR 1.b) informed Applicant that he would receive full forgiveness of the remaining principal balance on the home loan. (Item 2, page 15) This forgiveness was the result of a settlement agreement between the Department of Justice and the mortgage lender. The letter informed him that any additional payments he made would be applied to the balance. He was also informed that the Internal Revenue Service (IRS) could be informed of any debt forgiveness.

Applicant provided no additional information as to the \$3,819 past-due on the second mortgage (SOR 1.c). Often state law requires a lender to look to the collateral, i.e., the home, for recovery of any moneys owed. However, Applicant provided no information on the state law and no documentation as to the status of the second mortgage.

As of November 2014, Applicant had “satisfied in full” the judgment listed in SOR 1.e (\$2,210). (Item 2, page 10) On November 2010, the debt charged-off account in SOR 1.d (\$5,011) was cancelled. An IRS Form 1099C, cancellation of debt, was issued. (Item 2, page 9) In April and May 2015, \$500 was withdrawn automatically from his bank account each month and applied to the debt in SOR 1.f (\$16,147). (Item 2, pages 11 and 12) He asserts he is on a monthly repayment plan and the balance owed has been reduced to \$10,300. (Item 2, page 2)

A non-SOR debt, which Applicant had listed in his April 2012 Electronic Questionnaires for Investigations Processing (e-QIP) (Item 3, pages 34 and 35) has been paid and the lawsuit dismissed. (Item A) Applicant’s credit reports show numerous accounts as being “paid as agreed.” (Items 5 and 6)

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 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 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his or her finances to meet his or her financial obligations.

The SOR listed a judgment, three past-due accounts, one collection account, and one charged-off account, which totaled approximately \$103,000. Disqualifying

Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five 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;

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

(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.

Due to a settlement agreement between the Department of Justice and the mortgage lender, Applicant's mortgage debt (SOR 1.b, \$61,845) has been forgiven. The past-due amount owed in SOR 1.a (\$14,082) was owed to a previous holder of the mortgage note. That right to collect on any delinquent debt would have been extinguished when the mortgage note transferred to the new holder in due course. The past-due mortgage debt in SOR 1.a is not a collectable debt.

The debt in SOR 1.d has been cancelled and an IRS Form 1099C issued. The amount of debt cancelled is less than the charged-off amount, but it would be highly unusual that a lender would chose to cancel only part of a debt and inform the IRS that only part of the debt was cancelled. I do not believe SOR 1.d remains a debt owed by Applicant. Applicant paid the judgment in DOR 1.e and has documentation confirming full satisfaction on the debt.

Applicant is making monthly payments on the collection debt (SOR 1.f). Even though only two monthly payments of \$500 each are documented, I believe his assertion that monthly payments are being made and the balance has been reduced to approximately \$10,000. This belief comes from his having arranged payments on other

obligations and honoring those payments on the judgment, and his paying off of a non-SOR debt.

AG ¶ 20(a) applies. His credit report shows numerous accounts that were paid as agreed. His wife losing her job, her illness, and the flood damage to his property all led to his financial problems. These are unusual circumstances that were beyond his control. For the same reasons, AG ¶ 20(b) applies. Based on the events in his life, he has acted responsibly under the circumstances.

The mitigating condition listed in AG ¶ 20(c) applies in part. There has been no evidence Applicant has received financial counseling. However, 74 percent of the debt relates to the first mortgage on his home, which is now forgiven. Thus, there are clear indications the majority of his financial problems are resolved.

The mitigating condition listed in AG ¶ 20(d) applies to the debts in SOR 1.e and f. (\$1,256). It is arguable that Applicant may not honor his monthly payments related to the collection debt, however, his action in honoring other repayment agreements leads me to believe he will continue with his monthly payments. There is no documentation concerning the second mortgage and the listed \$3,819 past-due amount. This amount is sufficiently small as not to be of security concern in light of his efforts to address his other delinquencies.

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. Applicant honorably served in the U.S. Army during a time of war. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money

was not spent frivolously, nor spent on luxuries. There is no indication he is living beyond his means. He is 72 years old and has worked for his company since 1980. His credit report list numerous accounts as being paid as agreed. The majority of Applicant's past-due debt has been addressed.

The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.f: 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.

CLAUDE R. HEINY II
Administrative Judge