



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 12-10304
)	
)	
Applicant for Security Clearance)	

Appearances

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

10/14/2016

Decision

HOGAN, Erin C., Administrative Judge:

On November 27, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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 Department of Defense after September 1, 2006.

On December 15, 2016, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 12, 2016. The case was assigned to another administrative judge on May 10, 2016, and transferred to me on July 27, 2016. On August 2, 2016, a Notice of Hearing was issued, scheduling the hearing for August 26, 2016. The hearing was held as scheduled. During the hearing, the Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6 without objection. Applicant testified, called one witness, and offered five exhibits which were admitted as Applicant Exhibits (AE) A – E without objection. The transcript (Tr.) was received on September 6, 2016. The record was held open until September 9, 2016, to allow Applicant to submit

additional documents. Applicant timely submitted a document which is admitted as AE F. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his response to the SOR, Applicant admits all SOR allegations.

Applicant is a 43-year-old employee of a Department of Defense contractor seeking a security clearance. He has worked for his current employer since October 2012. He left high school in order to earn money to support his family. He is in the process of studying for his General Equivalency Degree. He married in September 2013. He and his wife have three children, two daughters, ages 6 and five months, and a son, age 2. Applicant also has two adult sons, ages 21 and 23, from a previous relationship. (Gov 1; Tr. at 21, 26-27, 39, 53)

Applicant's security clearance background investigation revealed that he owed child support arrearages for his two older sons. The SOR alleged the balance of his past due child support amount was \$44,000. (SOR ¶ 1.a: Gov 1 at 38-39; Gov 5 at 4) 4 at 4) The SOR also alleged a \$606 account that was placed for collection in 2008 (SOR ¶ 1.b: Gov 2 at 1; Gov 3 at 4) A credit report dated May 30, 2012, listed four additional delinquent accounts. (Gov 3 at 4-5) However, they no longer appear on Applicant's recent credit reports and are not alleged in the SOR because they are resolved. (Gov 2; Gov 6)

In his answer to the SOR, Applicant admits both debts. Applicant testified that he stopped paying his child support for his two oldest sons after he caught their mother with another man. The mother of his children sought child support through State A even though he had paid her \$500 per week before the court order was entered. He began his child support payments in arrears because he could not prove that he paid the previous payments. A few years later, Applicant's mother passed away. Applicant was depressed and began drinking heavily for a number of years. He did not pay child support during the period he was drinking heavily. (Tr. 28 – 33; Gov 5).

In 2002, Applicant moved to State B, in part, to look for employment, and, in part, to get away from alcohol. He continued to abuse alcohol after moving to State B. He was arrested for DUI in July 2004 and then arrested for DUI in July 2008. After the 2008 DUI arrest, Applicant was ordered to attend alcohol counseling classes. He connected with one of his counselors, found help, and continued with the counseling sessions after he finished the court requirements. He has not consumed alcohol in over eight years. He attended Alcoholics Anonymous (AA) until August 2009, when he and his fiancé, now wife, moved to the State C where he currently resides. Applicant no longer attends AA, but has found religion and relies on his faith to remain sober. (Tr. 33 -36)

Once Applicant became sober, he began to work on paying off his delinquent debts. After moving to State C, Applicant had several jobs before being hired by his

current employer. He worked as an apprentice for one year. He was laid off as a result of downsizing. He worked for another company for one year in 2010. Applicant always made sure that child support was deducted from his paychecks when he was working. His income tax return refunds are also applied to his child support arrearages. (Tr. 38-39, 56-57, 68) In his current position, payments towards his child support arrearages are taken out of his paycheck through an automatic deduction. (AE C; AE E) The current balance of his child support arrearage is \$32,415. (AE A; AE F at 6)

Applicant believes the \$606 collection account was for a self-help compact disc that he purchased in 2008. (Tr. 43-45) After the hearing, he entered into an agreement with the creditor. He agreed to pay \$300 on September 16, 2016; \$100 on October 21, 2016, and \$100 on November 18, 2016, in full settlement of the debt. Applicant provided proof that he paid the first installment of \$300 on September 16, 2016. (AE F at 7-10)

Applicant's wife testified during the hearing. She and Applicant met in 2008 and married in September 2013. She testified that her husband does not have good recognition of dates and times. She is responsible for the household budget. She testified that they had bad credit but steadily worked to improve their credit. They have kept in touch with creditors making arrangements so that they could pay as soon as they were able to afford to make payments. They were able to purchase a car and a home. They have three beautiful children together. Applicant has a steady job and earns overtime when the company allows it. Applicant's wife is a full-time student studying for her Master's. She will graduate next summer, and then they will have two incomes. They hope to pay more towards Applicant's child support arrearages once she finds a job. Although he made errors in the past, Applicant's wife says he has done everything he can to move forward. (Tr. 54 – 63)

Applicant's family budget consists of a combined monthly income of \$4,250 and \$3,218 in monthly expenses. (AE F at 3-4) Applicant also has \$16,712.71 in a 401(k). (AE D)

Applicant and his wife have faced several financial challenges over the past few years. Applicant's wife was diagnosed with pre-eclampsia with her youngest child and had an emergency caesarian section. The baby was in the neo natal infant intensive care unit (NICU) for two weeks. Applicant's wife stayed with the baby, who was in a hospital located in a neighboring state. Applicant had to take four weeks of unpaid leave to care for the other two children. This was a financial setback for them. In addition, their oldest daughter had eye surgery at age two. She was also recently diagnosed with autism and attention deficit hyperactivity disorder. (Tr. 49, 59, 65-71)

Applicant's most recent credit report lists one debt that is past due \$181. It is a sporting goods store credit card. They are current on federal and state income taxes. (Tr. 51-52; Gov 6 at 2)

Whole-Person Factors

Applicant's supervisor states that Applicant has been a diligent worker and a trustworthy member of his crew. Applicant takes ownership of issues and works on difficult problems through completion. He ensures the quality of his work in order to meet the company's quality standards. Applicant is always willing to work extra hours to help out the team and complete important jobs. (AE B) Applicant has never been disciplined or suspended from work. He has never had any safety infractions. (Tr. 22)

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 must be considered when determining 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 as to obtaining 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 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 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

The security concern relating to the guideline 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 disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts); and AG ¶19(c) (a history of not meeting financial obligations), apply. Applicant neglected paying his child support obligations for a number of years which resulted in a balance of \$44,000 in arrearages. He also failed to pay a \$606 delinquent account that was placed for collection.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving 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 pay 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.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden

of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions apply:

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) applies. Applicant failed to pay his child support obligations during a lengthy period when he was depressed and drinking alcohol to excess. He has been sober since 2008. Upon becoming sober, he has attempted to resolve his delinquent accounts. When he was employed full-time, he arranged for the child support to be deducted out of his paychecks. Child support deductions are currently being taken out of his paychecks with his present employer. He has reduced the child support arrearage from \$44,000 to \$32,415. While there is no excuse for Applicant's lapse of paying child support, he is making amends and making payments now. He also is in the process of resolving the \$605 account alleged in SOR ¶ 1.b. He has taken steps to resolve his financial issues while supporting a wife and three young children. Applicant's past financial issues do not cast doubt on his 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) does not apply to the years where Applicant neglected to pay child support because he was drinking heavily. However, credit is given to Applicant after he became sober in 2008. For a number of years he changed jobs, but always insured that his child support arrearage was deducted from his paycheck. He and his wife have systemically resolved their delinquent accounts, most of which were not alleged in the SOR. Applicant and his wife recently experienced one major setback with his wife's complicated pregnancy and their youngest daughter's stay in the NICU for several weeks after her birth. However, Applicant acted responsibly under the circumstances. He still made his child support arrearage payments, and his recent credit report indicates only one credit card account that is behind by \$181. He and his wife live within their means and 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) applies because Applicant's financial situation is now under control. He is making his child support arrearage payments, he entered into a repayment agreement with the debt alleged in SOR ¶ 1.b. Applicant has demonstrated that his financial problems are being resolved.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant has reduced his child support arrearages from \$44,000 to \$32,415. He entered into a payment arrangement to resolve the \$605

debt alleged in SOR ¶ 1.b. He has made the first of three payments. While he could have resolved this debt earlier, credit is given because he resolved several delinquent debts before the SOR was issued, resulting in the debts not being alleged in the SOR. After attaining his sobriety, Applicant has worked to make amends and has done an excellent job. He is making a good-faith effort to resolve his debts.

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 the 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 considered the favorable reference of Applicant's supervisor and his four years of favorable duty performance with his employer. Applicant struggled with alcohol issues for many years. This resulted in his neglecting his child support obligations for his two older sons, and several DUIs. After his last DUI in 2008, Applicant met a good counselor who taught him successful tools to maintain his sobriety. He met his wife and they have made a good team in resolving their delinquent debts. They started their own family and have been able to purchase a car and a home. He is doing what he can to provide for his younger children and pay his child support arrearages. Although Applicant and his wife have struggled to pay the bills on occasion, they always have been able to eventually resolve their delinquent accounts. Security concerns under financial considerations are mitigated.

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.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge