



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



In the matter of:

)
)
) ISCR Case No. 14-05796
)
)
)

Applicant for Security Clearance

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel

For Applicant: Jenny Cochrane, Esquire

07/28/2016

Decision

WHITE, David M., Administrative Judge:

Applicant incurred a number of delinquent debts when his formerly successful business began to fail in 2003. He has taken responsible and positive steps to address the delinquencies, and has substantially resolved all of them. His current financial situation is stable and solvent. Resulting security concerns were mitigated. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on February 18, 2013. On June 20, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant responded to the SOR in writing (AR) on July 15, 2015,¹ and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 14, 2015. The case was assigned to me on October 15, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 19, 2015, setting the hearing date for December 9, 2015. I granted Applicant's counsel's request for a continuance until January 29, 2016, and I convened the hearing as rescheduled. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered a corrected copy of his SOR response (AR) and Exhibits (AE) A through G, which were admitted without objection, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on February 3, 2016.

Findings of Fact

Applicant is a 53-year-old employee of a defense contractor, where he has worked since January 2011. He is a high school graduate, who is honorably retired from the U.S. Army Reserve. He has held a security clearance without incident, in connection with his military service and current employment, since 1979. He is married and has four children. (GE 1; Tr. 7-8, 28-29.)

Applicant denied the allegations concerning two formerly delinquent debts set forth in SOR ¶¶ 1.a and 1.b, and admitted the SOR ¶ 1.c allegation concerning his 2005 Chapter 13 bankruptcy filing, with explanations. (AR.) Applicant's admissions and explanations are incorporated in the following findings.

In addition to his Army Reserve service, Applicant was a self-employed interior finish carpentry contractor from August 1994 until June 2007. In about 2003, he began to encounter financial and management difficulties due to a lack of available work. He and his wife eventually sought legal counsel and filed for Chapter 13 bankruptcy in October 2005. (AR; Tr. 31, 45-48.)

In July 2007, Applicant was mobilized to active duty and deployed to Iraq with his Army Reserve unit. This deployment lasted until June 2008. He was unable to find any employment upon his return from military duties, and was unemployed through January 2009. In February 2009 he volunteered for mobilization again, and was deployed to Kuwait from March 2009 until he was injured in July 2009. He was then medically evacuated to a major Army facility in the U.S. where he remained until his Honorable discharge from active duty in November 2010. He received a 70% disability rating from the Department of Veterans Affairs, and retired from his Army Reserve military service effective May 2014. In January 2011, he obtained his current position working as a security guard. (AR; GE 1; Tr. 17, 29, 32-34, 56-62.)

¹This is the date that Applicant signed his notarized response. His attorney submitted the full response that was dated August 20, 2015, but two lines were omitted from page 2 of that document. At the hearing a full copy of the response, dated August 24, 2015, was submitted with an additional enclosure. See Tr. 23-26.

Applicant successfully made all of his Chapter 13 bankruptcy plan payments, totaling \$19,575, to the appointed trustee until March 2008. On February 14, 2008, his bankruptcy trustee filed a motion objecting to confirmation of his bankruptcy plan and seeking dismissal of the case due to some outstanding Federal income and county property tax obligations that had not been factored into the original computations. The bankruptcy court granted the trustee's motion on March 26, 2008, while Applicant was deployed in Iraq. The trustee had not made any disbursements of funds to Applicant's creditors, and returned the \$19,105 to Applicant after taking \$470 for serving as trustee. (AR; GE 6; Tr. 22, 30-31, 48-49.)

Starting in August or September 2009, while Applicant was on medical hold at the major Army facility, he worked closely with a financial advisor from the Wounded Warrior Transition Battalion to address his delinquent debts, using his active duty income and the funds that remained from his Chapter 13 bankruptcy trustee after he fully resolved his Federal and county tax issues. Most formerly delinquent debts were brought current, paid, or settled, and some were forgiven. The financial advisor also helped him develop good budgeting and management strategies to maintain solvency and avoid new delinquencies. At the time the SOR was issued, only one medical debt and a county property tax bill remained unresolved. (AR; SOR; GE 2; GE 3; GE 4; Tr. 32-35, 49, 54-60.)

Applicant's credit report failed to identify the creditor who reported the medical debt alleged in SOR ¶ 1.a, so his attorney and her staff conducted extensive research to identify it and assist in its resolution. The best available information indicates that the debt, which was reported effective March 5, 2015, was the same as a medical debt reported by a different credit agency in 2009. After being identified, that debt was paid in full in August 2015. (GE 4 at 2; GE 5 at 9; AR; AE A; Tr. 16, 38-39, 65-67, 71-75.)

After bringing his formerly delinquent county property taxes current, as discussed above, Applicant arranged to set aside funds on a regular basis in order to make such payments in the future. He provided documentation from county records showing that his property taxes were paid on time and in full, without penalty or interest, for tax years 2012 through 2015, and that no property tax delinquency currently exists. (AR; AE C; Tr. 16, 34-38, 49-52.)

Applicant's current debts and bills are reasonable and all are in a current status. He has more than \$300,000 of equity in his home, and sufficient income to meet all of his regular expenses while adding to his savings. Applicant's testimony was credible and knowledgeable concerning his financial circumstances. He has successfully completed financial counseling, is steadily employed, and demonstrated his determination and ability to remain within his budget and avoid any future delinquencies. (Tr. 52-65.)

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 (DCs) and mitigating conditions (MCs), which 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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 avoided drawing 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant incurred some delinquent debt after his small business began to fail more than ten years ago. In 2005, he filed for Chapter 13 bankruptcy relief and made all required payments, but the case was dismissed while he was serving an overseas deployment in 2008 due to some tax issues. These facts provide substantial evidence under the foregoing DCs, thereby shifting the burden to Applicant to mitigate resulting security concerns. The SOR allegations and evidence do not support any other DC under this guideline.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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.

Applicant's financial problems began around 2003, when the small interior carpentry business he had successfully run since 1994 began to fail. Acknowledging that he could not repay all of his outstanding debt, he filed for Chapter 13 bankruptcy relief in 2005 in order to repay as much as the court determined to be appropriate while resolving those debts. He timely made all payments toward his bankruptcy plan until it was dismissed on motion of his trustee in March 2008 while he was deployed in Iraq. He subsequently resolved all of his formerly delinquent debts, except for one minor medical collection account of which he was unaware, and some of his delinquent county property taxes, as alleged in the SOR. He has undergone effective financial counseling, established a workable budget, and lives well within his means. The debts alleged in SOR ¶¶ 1.a and 1.b have both been fully paid and resolved. Applicant accordingly established substantial mitigation under each of the foregoing provisions for security concerns arising from his former delinquencies.

"An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement that plan.'" ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). Applicant has successfully established a meaningful track record of debt resolution that continues to date, and has reestablished a solvent and responsible financial situation under a manageable budget plan.

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 pertinent facts and circumstances surrounding this case. Applicant is a sincere and mature individual, who is honorably retired from the Army Reserve with a substantial disability. He has accepted accountability for his debts and either resolved each of them or brought them current. He acted responsibly with respect to his 2005 bankruptcy plan, and continued to resolve his debts after that case was dismissed while he was serving overseas. His positive actions to address both the sources and results of his indebtedness have substantially eliminated the potential for pressure, coercion, or duress, and make continuation or recurrence of significant financial problems unlikely. Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.c: 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's eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge