



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



In the matter of:)
)
) ISCR Case No. 14-06663
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

07/29/2016

Decision

CERVI, GREGG A., Administrative Judge:

Applicant mitigated the financial considerations and foreign preference security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 20, 2014. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant or deny Applicant's eligibility for a clearance. On November 13, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, and Guideline C, foreign preference.¹

¹ 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 (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on January 2, 2016, and requested a hearing before an administrative judge. The case was assigned to me on April 7, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 25, 2016, scheduling the hearing for May 25, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Exhibits (AE) A and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 3, 2016. The record was held open for Applicant to submit additional information. He submitted AE C through E, which were admitted without objection. On motion by Department Counsel and without objection from Applicant, the SOR was amended to change the judgment date in ¶ 1.c from 20XX to 2008.

Findings of Fact

Applicant is a 41-year-old employee of a defense contractor. He has worked for his current employer since 2012. He is applying to obtain his first security clearance. He is a high school graduate with some college. He married in 2009, has one child from this marriage, and three children from a previous relationship for which he pays child-support. His spouse is on active duty in the U.S. military. Applicant was born in Jamaica, and naturalized as a United States citizen in 2011. He held a Jamaican passport, issued in 2007. He relinquished his foreign passport to his facility security officer (FSO) and it was destroyed in May 2016.

The SOR alleges seven delinquent debts, including five judgments. Applicant incurred his debts after a sudden workplace illness in 2005. He was hospitalized and was advised by his union to apply for Medicaid benefits because his medical expenses were not fully paid. He testified that Medicaid authorities told him he was qualified, and the hospital collected the information and he signed forms to submit to Medicaid. Six months after the procedure, Applicant received a bill for the treatment from the hospital. He contacted the hospital and they instructed him to ignore the bills because Medicaid should pay them. Applicant continued to receive bills and discussed them with the hospital finance department until the hospital filed bankruptcy, went out of business, and phone numbers were disconnected. One of the doctors unaffiliated with the hospital pursued Applicant and Applicant agreed to pay with automatic deductions from his paycheck.

Applicant hired a debt repair company in 2011, but the company stopped making progress toward resolutions despite his payments. In 2013, Applicant hired a second company to review his credit bureau report (CBR) and make corrections or pay debts as necessary. Applicant's actions to resolve the SOR debts are noted below:

SOR DEBT	ACTION TAKEN	CURRENT STATUS
1.a Bank judgment for \$657	Paid collection in 2007 or 2008 per testimony and confirmed in CBR	Paid

1.b Medical judgment for \$1,904	Paid through voluntary garnishment in 2011 and confirmed in CBR	Paid
1.c State judgment for \$3,948	Paid per testimony and confirmed in CBR	Paid
1.d Hospital judgment for \$49,391	Creditor filed bankruptcy and is no longer in business	Unpayable
1.e Duplicate of 1.d	Duplicate	Duplicate
1.f Collection for \$2,468	Account is no longer in collection and has been removed from the CBR	Resolved
1.g Collection for \$1,006	Appears to be a duplicate of 1.a. This collection is no longer on CBR	Duplicate

Applicant has taken responsibility for his financial situation and has worked closely with a credit repair agency to ensure his credit report remains clean. His current CBR shows no new delinquencies, and he is able to meet his current debts and expenses.

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 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, administrative judges apply the guidelines 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."

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 the 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 EO 10865 provides that adverse 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 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 conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant had a history of delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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.

There is sufficient evidence to determine that Applicant's financial problems have been satisfactorily resolved. He suffered a financial impact from a sudden illness requiring hospitalization. He had reason to believe that Medicaid would cover his hospitalization costs but inexplicably, it did not. He pursued the matter with the hospital until it declared bankruptcy and closed. Most of the remaining debts were satisfied several years ago. I find that he acted responsibly under the circumstances once he became aware of the debts, and hired professional assistance to resolve his debts and repair his credit report. His current CBR shows no new delinquencies. I am confident Applicant will continue to use his financial resources wisely to stay current on debts and expenses. He has a steady work history and his income is sufficient to meet his family's needs.

Applicant demonstrated that he has gained control of his financial situation, and his overall efforts show a clear intent to resolve his debts. His financial issues no longer cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), (b), (c), (d), and (e) apply. Overall, Applicant's financial problems have been resolved or are under control. I find that the financial considerations concerns have been sufficiently mitigated.

Guideline C, Foreign Influence

The security concern for foreign preference is set out in AG ¶ 9 below:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Applicant possessed a Jamaican passport, issued in 2007. He became a naturalized U.S. citizen in 2011. His possession of a foreign passport created security concerns under AG ¶ 10 (a)(1), as stated below:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport.

Conditions that could mitigate foreign preference security concerns are provided under AG ¶ 11. The following are potentially applicable:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant obtained his Jamaican passport before he became a U.S. citizen. Once he understood the security concerns raised by holding a valid foreign passport, he surrendered it to his FSO and it was destroyed. There is no evidence that he used his Jamaican passport, in preference to his U.S. passport, to travel after he became a U.S. citizen. AG ¶¶ 11(a) and (e) are applicable. He mitigated the security concerns alleged under Guideline C.

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. I have incorporated my comments under Guidelines F and C in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial and foreign preference security concerns.

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.g:	For Applicant
Paragraph 2, Guideline C:	For Applicant
Subparagraph 2.a:	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.

GREGG A. CERVI
Administrative Judge