



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



In the matter of:)
)
) ISCR Case No. 14-07029
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

07/29/2016

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On September 1, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant answered (Answer) the SOR on November 12 and November 20, 2015, and requested a hearing. The case was assigned to me on December 30, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 3, 2016, setting the hearing for February 24, 2016. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 4, which were admitted into

evidence without objection. I marked Department Counsel's exhibit list as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A through K, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional evidence. He submitted AE L through O, which were admitted without objection. DOHA received the hearing transcript (Tr.) on March 3, 2016.

Findings of Fact

Applicant denied all the SOR allegations (with explanations) except for ¶ 1.g, which he admitted. His admission is incorporated as findings of fact. I make the following additional findings of fact.

Applicant is 62 years old and has worked for government contractors, on and off, since 2001. He has a high school diploma. He is married and has two adult children. He served in the Army from 1972 to 1992 and retired honorably in the pay grade of E-7. As a civilian contractor he deployed to Iraq twice and Afghanistan twice during times of conflict. He has held a security clearance for 31 years and has never had a security incident.¹

The SOR alleges Applicant has nine delinquent debts totaling approximately \$159,201 (the largest debt is from a past-due mortgage account for \$131,922).² The debts were listed on credit reports from March 2014, December 2014, and February 2016.³

Applicant's financial difficulties came about in 2011 when he was laid-off from his full-time federal contractor position. He was either unemployed or underemployed performing part-time work from 2011 until September 2015, when he gained full-time employment. He lived off his savings and received financial counseling. He hired a debt relief company (DRC) in September 2012 to assist him with paying the overdue credit card debt he accumulated during this time. He pays the DRC \$515 monthly and it accumulates enough money in an escrow account to negotiate settlements with the various creditors. He has continuously paid the DRC since 2012. The status of the debts is as follows:⁴

SOR ¶ 1.a past-due mortgage account (\$131,922):

The property that secured this mortgage debt was foreclosed in May 2015. Applicant stated he turned the keys over to a realty company and has never had any

¹ Tr. at 5-6, 16, 64, 80-81; GE 1.

² Without objection, SOR ¶ 1.b was amended by deleting the word "mortgage" and substituting therefore the word "debt." Tr. at 55.

³ GE 2-4.

⁴ Tr. at 16-19, 36-37, 50; AE A-K.

further issues with this debt or the property. The latest credit report shows that this debt has a zero balance. This debt is otherwise resolved.⁵

SOR ¶¶ 1.b through 1.i credit card collection accounts (\$7,267; \$5,159; \$4,336; \$2,923; \$2,512; \$2,344; \$1,970; \$768):

Applicant produced documentation showing that through his contract with the DRC he has settled several SOR debts and non-SOR debts. He is also in the process of negotiating settlements with the remaining SOR creditors. Through January 2016, he has paid approximately \$9,000 to settle six debts. These debts are resolved or being resolved.⁶

Applicant's current financial situation is much improved. He is current on all his federal and state taxes. He rents a home and is current on his payments. He no longer uses credit cards. He has about \$2,000 monthly discretionary income. He believes he will have the remainder of his past-due debts paid within two years.⁷

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 that 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

⁵ Tr. at 51-52; GE 4.

⁶ Tr. at 49-51; AE L.

⁷ Tr. at 65-66.

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 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 about 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* Executive Order 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 as follows:

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. Two are potentially applicable in this case:

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

Applicant had multiple delinquent debts that he failed to pay over an extended period of time. The evidence is sufficient to raise both disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

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

The delinquent debts attributed to Applicant are somewhat remote, but several remain unpaid. The foreclosure eliminated Applicant's mortgage debt. He sought assistance from a DRC long before the SOR was issued in this case and has settled several debts through its use. He continues to use the DRC to negotiate settlements with the remaining creditors. Because he has made efforts to repair his financial position, it is reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

The circumstances that led to Applicant's financial problems, periods of unemployment and underemployment between 2011 and 2015, were beyond his control and he acted responsibly by seeking the assistance of a DRC in 2012. AG ¶ 20(b) applies. Applicant received credit counseling. He also made a good-faith effort to settle his credit card debts by using a DRC to negotiate settlements with the creditors. AG ¶ 20(c) and ¶ 20(d) apply.

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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military and federal contractor service, including his multiple deployments during times of hostilities. I found Applicant to be honest and candid about the circumstances that led to his debts. He took action to resolve them. I find it unlikely that Applicant will be in a similar future situation.

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 financial considerations 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.i: 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.

Robert E. Coacher
Administrative Judge