



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



In the matter of:

ISCR Case No. 15-00446

Applicant for Security Clearance

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

10/11/2016

Decision

CREAN, Thomas M., Administrative Judge:

Applicant provided sufficient documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is granted.

Statement of the Case

On July 11, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 4) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on September 20, 2012. (Item 9) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On July 24, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in the DOD on September 1, 2006.

Applicant answered the SOR in an undated response admitting the two delinquent debt allegations with explanation. He elected to have the matter decided on the written record. (Item 3) Department Counsel submitted the Government's written case on September 30, 2015. Applicant received a complete file of relevant material (FORM) on February 25, 2016, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely filed a response to the FORM. (Item 10) I was assigned the case on September 27, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM agent (Item 3) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the summary. In his response to the FORM, Applicant did not object to consideration of the PSI. Any objection to the information is waived. I will consider information in the PSI in my decision.

Findings of Fact

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 53 years old. He graduated from high school in 1981. He married in October 1997. He was employed as a driver and warehouseman from January 1990 until February 2007. He was laid off after his position was eliminated, and he was unemployed from February 2007 until June 2012. He was hired as a ship fitter in June 2012 by a defense contractor which is his sponsor for a security clearance. He served in the Army Reserves from January 1983 until January 1989. (Item 4, e-QIP, dated July 11, 2012; Item 9, PSI, dated September 20, 2012)

The SOR alleges, and credit reports (Item 5, dated December 19, 2014; Item 6, dated October 4, 2013; Item 7, dated September 11, 2012; and Item 8, dated July 25, 2012) confirm that Applicant had two charged off credit card accounts with the same bank for \$14,730 (SOR 1.a) and \$5,895 (SOR 1.b). Applicant listed both of these debts in response to financial question 26 on his e-QIP (Item 3). Applicant admitted the debts to the security investigator. The credit cards were used to purchase items needed for his household when he was unemployed. He attributes his delinquent debts to lack of sufficient income because of his long period of unemployment. After gaining employment in 2012 with the defense contractor, Applicant hired an attorney and

contacted the collection agency to make arrangements to pay the debts. (Item 9, PSI at 2)

Applicant stated in his response to the SOR that his attorney reached an agreement with the creditor bank to consolidate the two debts at \$9,568.76. He agreed to pay \$100 monthly on the debt. Applicant included receipts for the payments he made on the debts. Many of the payments were for more than the required amount. (Item 3, Receipts from August 2013 until August 2015.) In his response to the FORM, Applicant provided a letter from the collection agency's attorney that the debt was paid-in-full as of December 18, 2015. He included court documents that the lien on his salary was also released. (Item 10)

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

Analysis

Financial Considerations

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, thereby raising questions about an individual's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect 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 creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet their financial obligations. 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 required to manage his or her finances in such a way as to meet financial obligations.

Credit reports reveal and Applicant admitted that he had two delinquent credit card debts with the same bank. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises issues about Applicant's willingness and ability to meet his financial obligations. Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration Mitigating Conditions under 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;

(b) the conditions that resulted in the financial problems 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 has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

The mitigating conditions at §§ AG 20 (a), (b), and (c) apply. Applicant incurred delinquent debt because of a long period of unemployment after he was laid off in 2007. These events took place over nine years ago and constitute conditions largely beyond his control. Applicant acted responsibly by hiring an attorney to have the debts consolidated and reach a payment plan. He has been making the required payments under the plan. He did not report that he had any financial counseling except for the possibility that he received some counseling from the attorney negotiating his payment plan. He has been making payments under this plan. There is a clear indication that his financial problems have been resolved and his finances are under control.

Mitigating condition AG § 20(d) applies. Applicant established a good-faith effort to pay his financial obligations. For a good-faith effort, there must be an ability to pay financial obligations, the desire to pay them, and evidence of a good-faith effort to pay or resolve the obligations. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling financial obligations is needed. Applicant must establish a meaningful track record of payment of financial obligations. A meaningful track record of payment can be established by evidence of actual payments or reduction of obligation through payments of debts. A promise to pay financial obligations is not a substitute for a track record of meeting obligations in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant presented sufficient evidence that he had a payment plan with the creditor starting in 2012 when he was hired by his present employer. He presented sufficient evidence that he made all of the required payments and that the debt is paid in full, and all liens are released. Applicant has shown that he acted reasonably and responsibly in regard to his financial obligations. His financial problems are under control. His reasonable and responsible action towards his finances is a strong indication that he will protect and safeguard classified information. Applicant presented sufficient information to mitigate financial security concerns.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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 Applicant's six years of service in the Army Reserves. Applicant provided sufficient credible documentary information to show that he incurred delinquent debt by conditions beyond his control. He established that he took reasonable and responsible action to resolve his financial obligations by agreeing to and making all of the payments required under a payment plan. His delinquent debts are paid in full. Applicant demonstrated appropriate management of his finances and a record of action to resolve financial issues. Overall, the record evidence leaves me without questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has established his suitability for access to classified information. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial situation.

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 interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge