



ISCR Case No: 15-00740

Applicant for Security Clearance

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

08/31/2016

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the security concerns raised as a consequence of a delinquent mortgage, unpaid student loans, and other delinquent debts. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Statement of the Case

On May 1, 2014, Applicant submitted a security clearance application (SF 86), as part of a re-investigation for a security clearance. On August 20, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) 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; DOD 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 DOD on September 1, 2006.

Applicant answered the SOR in writing (Answer) on September 1, 2015, and requested a hearing before an administrative judge. On March 21, 2016, the Department of Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On April 18, 2016, DOHA issued a Notice of Hearing setting the case for May 10, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 8 into evidence without objection. Applicant testified and called one witness. Applicant offered Applicant Exhibits (AE) A through U into evidence without objection. DOHA received the hearing transcript (Tr.) on May 19, 2016. The record remained open until May 31, 2016, in order to provide time to submit additional documents. Applicant timely submitted AE V through AE Z, which were admitted without objection. I marked Applicant's excel spreadsheet as AE AA and his letter as AE BB. Department Counsel had no objection to the admission of those documents, and they are admitted into the record.

Findings of Fact

In his Answer to the SOR, Applicant admitted all allegations, except those in ¶¶ 1.a, 1.k, 1.l, 1.n, 1.o, 1.p, 1.q, 1.r, and 1.s. He asserted some of those allegations were resolved or that he was unfamiliar with the creditors. All admissions are incorporated herein.

Applicant is 47 years old and married. He and his wife have three children, ages 20, 18, and 6. His niece, age 26, and her son have been living with Applicant and his family for five or six years. His mother-in-law has lived with them for five years. (Tr. 22-24; GE 2.)

In 1987 Applicant enlisted in the Navy and received an honorable discharge in 1997. He was a second class petty officer (E-5). He deployed multiple times. After his discharge, he worked for a couple different defense contractors before starting a position with his current employer in October 2006. He has been steadily employed since then. In 2010 he earned a bachelor's degree. (Tr. 18-21.)

In October 2007 Applicant purchased a house in State A. Sometime in 2010 his wife, who handled the finances, failed to make one mortgage payment on time. She called the bank shortly after the payment due date, and was told that the bank would put her on a repayment plan for that payment. Resolution of that problem took three and a half years, during which time they were advised to stop making mortgage payments, and subsequently received a notice of a foreclosure. After hiring an attorney, they were able to refinance the mortgage. In August 2015 Applicant started a new mortgage payment plan. (Tr. 24-28; AE E.)

In addition to the mortgage problem, Applicant's financial problems were exacerbated in 2008 when he lost about \$175,000 of his investment portfolio, which had provided monthly income of about \$1,500. In 2010 he was in a motorcycle accident and incurred about \$10,000 of out-of-pocket medical bills. In 2011 his appendix burst and he had another \$30,000 of medical expenses not covered by insurance. (Tr. 36-37, 72.)

Subsequently, Applicant's niece and her son moved in with his family, as did his mother-in-law, and he provided for their living expenses. In 2014 Applicant's employer transferred him from State A to State B. Within a year, he was transferred from State B to State C. His family has remained in State A during these transfers, resulting in additional monthly living expenses. (Tr. 30-32.)

Applicant's financial situation began to improve with the 2014 transfer when his salary increased, and then again in 2015 with another salary increase. He currently earns \$99,000 annually. (Tr. 32-33.) He provided a budget. His wife works and they have a net monthly income of \$5,437. After paying expenses and debts, they have about \$382 remaining. (Tr. 33, 40; AE C.) In addition to his salary, he received substantial performance bonuses last year and has received two this year. He used that money to pay debts. (Tr. 75, 81.)

During an April 2007 interview with a government investigator regarding matters in his January 2007 SF 86-1, Applicant discussed his past financial problems. He said they were the result of a garnishment for child support for a child born out of wedlock while he was in the Navy. He experienced periods of unemployment after he left the Navy. He filed a Chapter 13 bankruptcy in 1998, but never completed it. (GE 7.) During a June 2014 interview, he discussed his financial obligations, which included student loans, and some medical debts. (GE 2.)

Based on credit bureau reports (CBR) from November 2015, November 2014, and May 2014, the SOR alleged 19 debts. They included Applicant's delinquent mortgage payments of \$61,370, 10 delinquent student loans, 5 unpaid medical bills, 2 delinquent automobile loans, and an unpaid credit card. These debts accumulated between 2010 and 2014. A summary of the status of each debt is as follows:

SOR ¶ 1.a. The \$61,370 past due amount owed on Applicant's \$157,877 mortgage was resolved in August 2015 with a loan modification agreement. The principal amount of the modified mortgage is \$224,161, and includes all past-due payments. He said he has made monthly payments since the loan modification, and provided copies of payments for May and June 2016. (Tr. 40-42; AE E, AE X, AE Z.) The debt is being resolved.

SOR ¶¶ 1.b, 1, c., 1.d, 1.e, 1.f, 1.g, 1.i, and 1.j. These are eight delinquent student loans owed to a private company. They total \$58,208 and were taken out between 2005 and 2008. In April 2016 he negotiated a payment plan. His first payment of \$283 begins on October 18, 2016. His budget will accommodate the payments. (Tr. 43-46; AE C, AE L.) They are being resolved.

SOR ¶¶ 1.h and 1.m are two student loans that totaled \$6,830. He made some payments on these loans before the creditor obtained a judgment against him, resulting in a garnishment. As of May 2016 they were fully repaid. (Tr. 47-52; AE M, AE X, AE Y.)

SOR ¶ 1.k. The \$3,052 delinquent automobile loan was paid in October 2014. (Tr. 52-53; AE O.)

SOR ¶ 1.l. The \$2,011 automobile loan had a past due amount of \$87. The loan was paid in full in May 2016. (Tr. 54-57; AE N, AE U, AE X, AE Z.)

SOR ¶ 1.n. The \$1,485 debt owed to a credit card company is being paid through monthly payments of \$50. Applicant began those payments in April 2016, having previously disputed it. It is being resolved (Tr. 59; AE X, AE Z.)

SOR ¶ 1.o. The \$763 medical debt is being paid through monthly payments of \$75 which started in April 2016. It is being resolved. (Tr. 59; AE Q, AE X, AE W, AE Z.)

SOR ¶ 1.p. The \$505 medical debt was paid in February 2014. (AE T, AE BB.)

SOR ¶ 1.q. The \$396 medical debt was paid in September 2010. (AE T, AE BB.)

SOR ¶ 1.r. Applicant cannot locate a payment verification for this \$93 medical debt in his bank statements or with the creditor. It appears on the May 2014 CBR, but no subsequent CBRs. It is sufficiently resolved. (GE 5.)

SOR ¶ 1.s. The \$45 medical debt was paid in July 2016. (AE P, AE BB.)

Applicant's supervisor testified. He served in the Air Force for 29 years before retiring. He has held a security clearance for 27 years. He has known Applicant for 16 months. He rated Applicant a "five out of five" in his 2015 performance evaluation. (Tr. 83.) He said Applicant's performance is "impeccable." (Tr. 83.) He has no reason to question Applicant's trustworthiness or ability to handle classified information. He said Applicant received bonuses for his exemplary work. (Tr. 84-85.)

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 (AG) list potentially disqualifying and mitigating conditions, which are useful 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(a) and 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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 that an adverse decision shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns

about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

As documented by CBRs and his admissions, Applicant began accumulating delinquent debts between 2010 and 2014, which he was unable or unwilling to resolve before his recent pay raises. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those two disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets forth conditions that could potentially mitigate financial security concerns:

- (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.

¹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's financial delinquencies accumulated between 2010 and 2014, some of which were not resolved until recently. Hence, the evidence does not establish mitigation under AG ¶ 20(a). Applicant's delinquent debts arose as a result of several factors: loss of a large amount of his investment portfolio; large unexpected medical bills; a mortgage issue; geographic transfers; and family members moving in with Applicant. These were circumstances beyond his control. Because he did not present sufficient evidence demonstrating that he attempted to responsibly manage the debts while they were accumulating only limited mitigation under AG ¶ 20(b) is warranted.

Applicant did not provide evidence that he participated in credit, financial, or budgetary counseling. However, he submitted evidence, including a budget, indicating that his financial problems have been sufficiently brought under control to establish mitigation under AG ¶ 20(c).

Applicant paid 8 of the 19 SOR-listed debts; is paying 2 of them; and will soon begin making payments on the 8 student loans that were in deferment status. He tried to locate and resolve a small medical debt. Those actions demonstrate a good-faith effort to resolve debts, and support the application of AG ¶ 20(d) as to the allegations. He did not provide evidence documenting that he formally disputed any debt, as required for application of AG ¶ 20(e).

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has "... established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). In this instance, Applicant has established a track record of resolving his financial problems.

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). They include the following:

- (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) 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 include 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 47-year-old man, who served in the Navy for 10 years and was honorably discharged. He has successfully worked for a defense contractor since 2006. He has earned the support and recommendation of his supervisor. He has a history of financial problems, some of which occurred in the early 2000's, and then again beginning in 2010. At this time, he demonstrated that he is in control of his financial obligations. He testified forthrightly and presented his case in an organized manner, further exhibiting an understanding of his financial situation. The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

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.s:

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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge