



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



In the matter of:)
)
) ISCR Case No. 15-01101
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

09/15/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On August 20, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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 responded to the SOR on October 5, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on December 1, 2015. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections

and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 11, 2016. As of March 1, 2016, he had not responded.

The case was assigned to me on March 29, 2016. I had a telephone conference call with Applicant and Department Counsel on August 16, 2016. I granted Applicant 30 additional days to submit documentary evidence. He responded with documents that I have marked Applicant's Exhibits (AE) A and B. The Government exhibits included in the FORM and AE A and B are admitted in evidence without objection.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer since 2007. He served in the military reserves from 2004 until he was honorably discharged in 2012. He served in Iraq for more than a year in 2006 and 2007. He attended college for a period without earning a degree. He has never married, but he has lived with his girlfriend since 2009. They have an 18-year-old child. His girlfriend has two children from another relationship during the years Applicant and she were not together.¹

Applicant had periods of unemployment and underemployment before he obtained his current job in 2007. His girlfriend lost her job in about 2009 and was out of work for about two years. Applicant was financially responsible for his girlfriend and her three children, only one of which was his biological child. He was unable to pay all his bills, debts became delinquent, his home was foreclosed, and a car was repossessed.²

The SOR alleges Applicant's mortgage loan that was in foreclosure, an \$8,731 judgment for the deficiency owed on a car loan after the car was repossessed, four defaulted student loans totaling about \$20,000, and a charged-off credit card debt of \$1,542.

Applicant purchased his home in 2009 and financed it with a Department of Veterans Affairs (VA) guaranteed mortgage loan of about \$84,000. Applicant worked with his bank's home preservation specialist. In January 2012, the home preservation specialist informed Applicant that she was unable "to help [him] find a mortgage assistance solution." The VA purchased the property during a foreclosure sale in January 2012. There is no evidence of any deficiency owed after the sale. The two credit reports in evidence list the balance on the mortgage loan as \$0.³

Applicant established through documentary evidence that he has been paying \$50 per month toward the \$8,731 judgment (SOR ¶ 1.g) since August 2008. In March 2014, he paid \$605 toward the \$12,056 defaulted student loan alleged in SOR ¶ 1.b. In

¹ Items 3, 4.

² Items 2-6.

³ Items 2-6.

July 2015, the collection company for the student loan agreed to accept Applicant's offer to pay \$50 per month toward the loan. Applicant has been paying \$50 per month since July 2015, except for August 2016, when he made two \$50 payments.⁴

The student loans alleged in SOR ¶¶ 1.c (\$4,579) and 1.d (\$2,646) are in forbearance until September 2016. Applicant stated that he forgot about the \$728 student loan to the same creditor (SOR ¶ 1.f). He stated that he would attempt to set up payments arrangements or pay the debt in full.⁵

Applicant questioned the legitimacy of the \$1,542 charged-off credit card debt alleged in SOR ¶ 1.e. The debt is not listed on the April 2012 combined credit report. Applicant wrote that he did not remember having an unpaid account with that company. He opened a new credit card account with the company in 2014, and he did not believe he would be able to do so if he owed money to the company. The SOR debt is listed on the January 2015 Equifax credit report. It is reported as being opened in March 2009, with a November 2011 date of last action. That report also lists the account with the same credit card company that Applicant opened in June 2014.⁶

Applicant listed multiple delinquent debts on the Questionnaire for National Security Positions (SF 86) he submitted in March 2012. He also discussed his finances during his background interview in May 2012. There is no evidence of financial counseling. He paid other debts that were not alleged in the SOR. He stated that he intends to pay his delinquent debts.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, 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.

⁴ Items 2, 4, 5; AE A, B.

⁵ Items 2, 4-6.

⁶ Items 2, 5, 6.

⁷ Items 2-6.

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 delinquent debts that he was unable to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as 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.

Applicant and his girlfriend both had periods of unemployment and underemployment. He lost his home to foreclosure, but there is no evidence of a deficiency balance. He has been consistently paying the judgment since 2008 and the largest student loan since July 2015. Two student loans are in forbearance. He stated that he forgot about the smallest student loan to the same creditor, but he would pay it. He paid other debts that are not alleged in the SOR.

Applicant questioned the legitimacy of the \$1,542 charged-off credit card debt alleged in SOR ¶ 1.e, stating that he did not remember having an unpaid account with that company and that he opened a new credit card account with the company in 2014. I have my own doubts about the debt. It is not reported on the 2012 combined credit report even though the later credit report listed it as being opened in March 2009, with a November 2011 date of last action. I have also considered that Applicant was forthcoming about other debts in the SF 86 and during his interview. AG ¶ 20(e) is applicable to that debt.

AG ¶¶ 20(b) and 20(d) are applicable; AG ¶¶ 20(a) and 20(c) are partially applicable. Applicant's financial issues are mitigated.

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 Guideline F in this whole-person analysis.

I considered Applicant's honorable military service and particularly his service in Iraq. I also considered the nature of his financial problems, and the steps he has taken to resolve them. He has a plan to resolve his financial problems, and he has taken significant action to implement that plan.

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 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.g: | 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.

Edward W. Loughran
Administrative Judge