



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



In the matter of:)
)
) ISCR Case No. 15-01257
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

11/04/2016

Decision

CURRY, Marc E., Administrative Judge:

Applicant's financial problems resulted from his failed business, which began struggling shortly after the Great Recession in 2008, and the breakdown of his marriage, which occurred shortly thereafter. Since then, he has organized his delinquent debts and made substantive progress toward satisfying them. Under these circumstances, Applicant has mitigated the financial considerations security concern. Clearance is granted.

Statement of the Case

On September 23, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant 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; Department of Defense 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. On October 20, 2015, Applicant answered the SOR, denying the allegations and requesting a decision on the written record rather than a hearing.

On January 28, 2016, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on February 5, 2016. He submitted a three-page response by the March 6, 2016 deadline. On March 8, 2008, he e-mailed Department Counsel informing him of his intention to submit additional documents. By March 14, 2016, he had submitted four pages of additional information. Department Counsel did not object to their incorporation in the file.¹

On August 11, 2016, the case was assigned to me. On October 20, 2016, I reopened the record through October 28, 2016 to afford Applicant the opportunity to submit additional exhibits. Within the time allotted, he supplemented his FORM response with 17 pages of additional information.²

Findings of Fact

Applicant is a 48-year-old man with one child, age 14. He is divorced. He has a bachelor's and a master's degree in the field of engineering, earned in 1991 and 1996, respectively. (Item 2 at 10-11; Item 3 at 4) Applicant served honorably on active duty in the U.S. Marine Corps from 1992 through 1994. (Item 3 at 19) Since 2006, he has been working for a defense contractor as a systems engineering manager.

In the mid-2000s, Applicant owned a part-time consulting business. His clients were community service providers that were dependent on revenue generated from state government contracts. When the recession occurred in 2008, many of the community service providers that did business with Applicant lost revenue as state governments cut their state government contracts. As these community service providers struggled, Applicant gradually began experiencing a downturn in his business. By 2009, his business had failed, and he had incurred approximately \$5,700 of delinquent debt, as alleged in SOR subparagraph 1.b.

At or about the time that Applicant's part-time business began struggling, his marriage began deteriorating. In January 2012, Applicant and his wife separated, and in May 2013, Applicant filed for divorce. (Item 2 at 4; Item 3 at 19) As part of a separation agreement, Applicant's estranged wife agreed to pay the debt alleged in subparagraph 1.a, totalling \$10,857.

Applicant's estranged wife did not pay the debt. In March 2016, Applicant contacted the creditor and negotiated a payment plan. (Response at 10) Consistent with

¹In sum, the Response to the FORM, including copies of e-mail correspondence between Applicant and Department Counsel totals 11 pages.

²Response to Form, pages 12 through 28.

the plan, he began making \$150 monthly payments. (Response at 12-21) As of October 2016, he had reduced the balance by \$2,500. (Response at 26)

In March 2016, Applicant reached an agreement to satisfy the debt related to the business failure, alleged in subparagraph 1.b, by making \$200 monthly payments. (Response at 5) He has been making the payments, as agreed. (Response at 23-24)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

Applicant’s financial problems were caused by a business failure in 2009, followed by a marital breakdown leading to his divorce in 2013. In the past year, he has contacted both creditors alleged in the SOR, negotiated payment plans, and he has been adhering to the plans. In sum, he has reduced his delinquent debt by approximately \$4,000, which constitutes approximately 25 percent of the total balance alleged in the SOR. Under these circumstances, AG ¶¶ 20(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),” 20(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 20(d) “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Upon considering the cause of Applicant’s financial difficulties, the steps that he took to remedy them, and the progress that he has made toward debt reduction, I conclude Applicant has mitigated the security concern.

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 a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge

