



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



In the matter of:

ISCR Case No. 15-01605

Applicant for Security Clearance

Appearances

For Government: Jeffrey Nagel, Esq., Department Counsel

For Applicant: Joshua B. Swigart, Esq.

July 22, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 50-year-old employee of a defense contractor. He is alleged to be indebted to seven creditors in the approximate amount of \$38,792. Applicant mitigated the Financial Considerations security concerns, because the debts were caused by unforeseen circumstances beyond his control, and he has acted responsibly with respect to his debts. He also has completed a number of financial management courses. Eligibility for access to classified information is granted.

Statement of the Case

On, December 9, 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; 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 September 1, 2006.

Applicant answered the SOR on January 12, 2016, and requested a hearing before an administrative judge. The case was assigned to me on March 28, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 1, 2016, scheduling the hearing for May 10, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 11. GE 1 was admitted over Applicant's objection. (Tr. 17-19.) GE 2 through GE 11 were admitted without objection. The Applicant offered Exhibits (AE) A through V, which were admitted without objection. Applicant testified on his own behalf and called two witnesses. The record was left open for Applicant to submit additional exhibits and on June 7, 2016, Applicant presented AE W through AE Z. Department Counsel had no objections to AE W through AE Z and they were admitted. DOHA received the transcript of the hearing (Tr.) on May 19, 2016.

Findings of Fact

Applicant admitted SOR allegation 1.a. He denied SOR allegations 1.b through 1.g. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 50-year-old employee of a defense contractor. He has worked for his employer since January 2012. He served in the Navy for 20 years and achieved the rate of petty officer second class (E-5). He retired from the Navy in July 2011. Applicant held a security clearance from 1991 to 2010. (GE 1; GE 2; GE 3; Tr. 34, 44-46.)

Applicant met and married his wife while in the Navy in the mid-1990s. They had three sons together. In 2003, Applicant's wife developed two serious medical conditions: Non-Hodgkin's Lymphoma and Borderline Personality Disorder. Prior to 2003, Applicant had good credit and successfully paid his bills. However, his wife's medical conditions affected their financial resources. Applicant's wife acquired debt that Applicant was not aware of. His financial problems were exacerbated by his wife abandoning their family in May 2003. Applicant was left to care for their three children on his income at that time. He has not spoken to his wife since she left in 2003, despite attempts to seek child support. Her location is unknown. (GE 1; GE 2; GE 3; GE 4; Tr. 34-47.)

In 2009 Applicant submitted an electronic questionnaire for investigations processing to renew his security clearance. (GE 2.) In February 2010, while still in the Navy, an SOR was issued to Applicant by the Department of the Navy Central Adjudication Facility (DONCAF). Applicant was alleged to be indebted to 17 creditors in the total amount of \$41,903. (GE 9.) Applicant claimed he never received the SOR. Department Counsel indicated the Government file contained no signed receipt. (Tr. 83-86.) Instead, Applicant credibly testified that his security manager called him and told him there was a judgment¹ against him that caused his clearance to be suspended. However, his access was actually revoked on November 24, 2010, via a letter from DONCAF that Applicant also never received. (GE 10; Tr. 83-84.) Around that time, Applicant hired an attorney to help him resolve his financial issues. He has worked

¹ This judgment is the same as that alleged in SOR ¶ 1.g and is discussed in detail below.

closely with that attorney over the past six years to research, contest, and resolve his delinquent accounts. Of those debts listed on the 2010 SOR, all but three were resolved and are no longer identified on Applicant's credit report. (GE 1; GE 9; GE 11; Tr. 87-88.)

Following the advice of his attorney, he filed Chapter 13 bankruptcy, as discussed below, to resolve his remaining delinquencies identified in the 2015 SOR. (GE 1; GE 3.) As stated in the 2015 SOR, Applicant is alleged to be indebted to seven creditors in the approximate amount of \$38,792. The status of his 2015 SOR-listed debts are as follows:

Applicant is alleged in SOR ¶ 1.a to be indebted on a vehicle loan in the amount of \$17,893. In 2008 Applicant financed this vehicle for his then girlfriend's use. They had an agreement that she would make the payments. When she left him and took the vehicle with her, he filed a police report that she had stolen the vehicle. He also filed a claim with his insurance company. However, unbeknownst to Applicant, the police considered it a civil matter because he willingly gave her the keys, and the insurance did not cover the loss. At that point, he contacted the creditor to arrange payments, but was told they were only willing to accept payment in full. He was advised by his legal counsel to cease payments until his lawyer could finalize arbitration with this debt. (GE 1 at 43.) Applicant did not have the funds to repay this debt in full and focused on repaying those debts that would accept payments. Applicant included this debt in his 2016 Chapter 13 bankruptcy plan. It is being resolved. (GE 6; AE S; Tr. 51-57, 76-79.)

Applicant is alleged in SOR ¶ 1.b to be indebted on a loan in the amount of \$12,104. This account was opened in 2009. Applicant used this loan to repay some of his wife's debt. It first became delinquent in April 2010, at the advice of Applicant's counsel, because the interest charged exceeded the limits of the Fair Credit Act. (GE 1.) Applicant's most recent credit report reflects that the balance of this debt is now \$13,595. Applicant included this debt in his 2016 Chapter 13 bankruptcy plan. It is being resolved. (GE 11; AE S; Tr. 57-60, 79.)

Applicant is alleged in SOR ¶ 1.c to be indebted on a loan in the amount of \$2,560. This is one of many loans Applicant took from this creditor. GE 7 reflected this account was opened in August 2009. It was charged off by the creditor. Applicant included this debt in his 2016 Chapter 13 bankruptcy plan. It is being resolved. (GE 7; AE S; Tr. 60-61.)

Applicant is alleged in SOR ¶ 1.d to be indebted on a medical debt in the amount of \$1,740. This debt has been delinquent since May 2014. Applicant testified that he has researched this debt and only recently learned the day before the hearing that it was related to dental treatment for his son. He has included it in his Chapter 13 bankruptcy petition. It is being resolved. (GE 7; AE S; Tr. 61-63.)

Applicant is alleged in SOR ¶ 1.e to be indebted on a loan in the amount of \$241. This debt was related to a loan Applicant took, using his vehicle as collateral. The title to the vehicle was returned to Applicant after he repaid the loan. He believes this debt was

resolved in full, but has included it in his Chapter 13 bankruptcy petition out of an abundance of caution. It is being resolved. (GE 1; Tr. 63-64.)

Applicant is alleged in SOR ¶ 1.f to be indebted on a cable bill in the amount of \$170. Applicant believes this debt was incurred fraudulently. He has never had an account with this cable provider. However, he has included it in his Chapter 13 bankruptcy petition. It is being resolved. (AE S; Tr. 64.)

Applicant is alleged in SOR ¶ 1.g to be indebted on a judgment in the amount of \$4,084. Applicant's attorney researched this judgment. It was discovered that this debt was the result of identity theft. After a lengthy dispute in court with this creditor, the debt was vacated and the judgment was dismissed. This debt is resolved. (AE I; AE J; AE K; Tr. 48-51.)

Applicant documented financial counseling from several sources from 2010 through the present. (AE E; AE F; AE G; AE R; Tr. 65-68.) He reports he has been working diligently with financial counselors and his attorneys, attempting to resolve his debts with the funds he had available. He has resolved a number of unalleged debts, as reflected by the 22 accounts paid and closed identified on his most recent credit report. (GE 11.) The financial counseling helped him prepare a budget to address his debts. Despite his commitment to repay all of his delinquencies, he has been limited by his income. As a result, he sought the protection of Chapter 13 bankruptcy, which would allow him to repay all of his SOR-listed creditors as identified on the Schedule E/F, albeit at a reduced rate. He filed for Chapter 13 on May 5, 2016. (GE S.) Under his plan, he is to make payments of \$580 per month until September 2016, when the payments will increase to \$673 per month. Applicant included proof of payment under the plan in his post-hearing exhibits. He testified that his current budget allots adequate funds to make his monthly bankruptcy payments. Applicant has actively worked to educate himself on financial matters to avoid future financial problems. He took the required financial counseling for filing the bankruptcy petition. (AE R; AE Z; Tr. 82.)

Applicant's military records and performance evaluations reflect he was a hardworking and trusted military member. (AE A; AE B.) Two witnesses, who testified on Applicant's behalf, indicate he is trustworthy and reliable. (Tr. 93-105.) One witness, who has known Applicant since 2005, testified that Applicant seems to live "below his means" and reflected Applicant drives an old car. (Tr. 97.) Character reference letters indicate Applicant has a strong work ethic and is hard-working. (AE W; AE Y.) His Facility Security Officer reported that he has never heard anything negative about Applicant. (AE X.) Applicant's landlord reflects he is a good tenant and always has been on time with his payments. (AE T; Tr. 80.)

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 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.

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 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.

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, 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 was indebted to seven creditors in the approximate amount of \$38,792, as alleged on the SOR. He acknowledged having financial difficulties dating back to 2003, when his wife left. Since that time, he has been unable to meet all of his financial obligations, despite his efforts to address his debts. The Government established a case for disqualification under Guideline F.

Five 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;
- (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 meets significant mitigating factors for financial considerations. While his financial difficulties are recent, they occurred due to circumstances that were largely beyond his control and are unlikely to recur. His wife's illnesses largely caused his financial problems. Those problems were exacerbated when she disappeared and left

Applicant as the sole provider for their three children. Similar circumstances are unlikely to occur. Further, his financial delinquencies do not establish recent poor judgment. Applicant has acted responsibly by hiring an attorney and obtaining financial counseling in 2010. Since then, he has slowly been working to resolve his delinquencies, with his attorney's assistance. After resolving the majority of those debts listed on the 2010 SOR, and fighting a lengthy court battle on debt incurred through identity theft, his attorney advised him the best way to address his remaining debts was to file for Chapter 13 bankruptcy. He has followed this attorney's advice and is going through the bankruptcy proceeding now. He listed all of his unresolved debts in the schedule of creditors who have unsecured claims. Under the circumstances, he is acting responsibly. Further, he has received a significant amount of education on how to avoid future debt. It is clear that Applicant's financial problems are under control. Moreover, bankruptcy is a legally viable option to discharge debt. While Applicant's debts had not been discharged by the close of the record, he has been attempting to resolve his debts, in good faith, through this legally viable option.

Applicant can be trusted to monitor his finances closely and resolve his debts in the future. Applicant has acted responsibly by following the advice of his counsel and educating himself on how to avoid future debt. Applicant's financial problems are under control. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply.

Additionally, Applicant successfully disputed SOR ¶ 1.g. He provided documentation to substantiate the dispute. AG ¶ 20(e) is applicable to this debt.

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 my whole-person analysis. Some of the factors in AG ¶ 2(a) were

addressed under those guidelines, but some warrant additional comment. Applicant is well respected by his supervisor. He performs well at his job. His integrity and his military service record show a pattern of trustworthiness.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 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.

Jennifer I. Goldstein
Administrative Judge