



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



In the matter of:)
)
) ISCR Case No. 15-01627
)
Applicant for Security Clearance)

Appearances

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

12/02/2016

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On September 25, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 answered (Answer) the SOR on November 18, 2015, and requested a hearing. The case was assigned to me on March 16, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 13, 2016, setting the hearing for June 16, 2016. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection.

Applicant testified and offered exhibit (AE) A, which was admitted into evidence without objection. The record was held open to allow Applicant to submit additional evidence. He did not submit additional evidence. DOHA received the hearing transcript (Tr.) on June 23, 2016.

Findings of Fact

Applicant admitted SOR ¶¶ 1.b and 1.d through 1.i. He denied SOR ¶¶ 1.a and 1.c. I incorporate these admissions into my findings of fact. After a review of the pleadings, transcript, and evidence, I make the following additional findings of fact.

Applicant is 43 years old and has worked for his current employer since August 2012. He has a high school diploma and has taken some college courses. He is married (second marriage) and has two children. He served in the Marine Corps for two years before he was honorably discharged in 1993.¹

The SOR alleges nine delinquent debts in the total amount of \$31,218. All the debts were listed in a credit report from February 2015. Some of the debts (¶¶ 1.a, 1.d, 1.f and 1.g) were listed in a credit report from September 2015, and one was listed in a credit report from November 2012 (¶ 1.b).²

Applicant explained that he experienced several financial setbacks that led to his debt status. He divorced his first wife in 2009. The court awarded his ex-wife possession of the residence and responsibility to pay the two mortgages. In 2011, Applicant was laid off from his job. Shortly thereafter he suffered a significant injury and incurred medical expenses that were not covered by insurance. In approximately 2012, he lost most of his personal possessions because of a massive flood in his area. He was unable to recover from his insurer because the flood was deemed an act of God and not covered by the policy. The status of the debts is as follows:³

SOR ¶ 1.a (mortgage \$18,886):

This is a past-due amount on a second mortgage for Applicant's former residence that was awarded to his ex-wife in their divorce. She purchased the property in her name and incurred both mortgages. She was ordered to pay both mortgages, but failed to do so and the house went through foreclosure. Applicant documented that the account was closed and no longer appears on his credit report. This debt is resolved.⁴

¹ Tr. at 5, 18; GE 1.

² GE 3-5.

³ Tr. at 20, 35-37; Answer.

⁴ Tr. at 20-22; AE A.

SOR ¶ 1.b (credit card \$5,145):

Applicant disputed this account because it was a corporate account that he paid, but it remained open and the creditor continued to charge fees. He contacted the creditor and the account was removed from his credit report. This debt is resolved.⁵

SOR ¶ 1.c (medical debt \$2,516):

Applicant paid this medical debt with supporting documentation showing that the debt was no longer listed on his credit report. This debt is resolved.⁶

SOR ¶¶ 1.d, 1.g-1.i (medical debts \$1,875; \$416; \$286; \$101):

Applicant paid these medical debts with supporting documentation showing that the debts were no longer listed on his credit report. This debt is resolved.⁷

SOR ¶ 1.e (telecommunication account \$1,169):

Applicant paid this debt with supporting documentation showing that the debt was no longer listed on his credit report. This debt is resolved.⁸

SOR ¶ 1.f (credit card \$824):

Applicant is attempting to work out a settlement with this creditor. He has contacted the creditor every six weeks, with the last contact being three weeks before the hearing. This debt is being resolved.⁹

Current Finances:

Applicant's most recent credit report shows he is in good standing. His annual income is approximately \$92,500. He has approximately \$26,000 in retirement accounts. There is no evidence of financial counseling.¹⁰

⁵ Tr. at 40; Answer; AE A.

⁶ Tr. at 41; AE A.

⁷ Tr. at 41, 44, 45; AE A.

⁸ Tr. at 41; AE A.

⁹ Tr. at 43-44; Answer.

¹⁰ Tr. at 46-47; AE A.

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 that 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 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 about 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* Executive Order 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 had nine debts that he failed to pay over an extended period of time. The evidence is sufficient to raise the above disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

Several 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 established that he was no longer responsible for the mortgage debt. He paid the medical debts and other debts, except for one credit card debt. He has contacted this remaining creditor in an effort to resolve this final debt. Since he has made efforts to repair his financial position, it is reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(e) partially apply.

The circumstances that led to Applicant's financial problems, his divorce, job loss, and medical condition, were conditions beyond his control. He acted responsibly by resolving his debts. AG ¶ 20(b) applies.

Applicant did not receive financial counselling. He made good-faith efforts to pay his debts with the resources he had at the time. He continues to resolve his remaining debts. AG ¶ 20(c) partially applies and ¶ 20(d) fully applies.

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 relevant 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 that guideline, but some warrant additional comment.

I considered Applicant's military service and the personal circumstances that contributed to his financial problems. I found Applicant to be honest and candid about the circumstances that led to his debts. He took reasonable actions to resolve them. I find it unlikely that Applicant will be in a similar future situation.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, 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.i:	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.

Robert E. Coacher
Administrative Judge