



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



In the matter of:)
)
) ISCR Case No. 15-01674
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

08/08/2016

Decision

CREAN, Thomas M., Administrative Judge:

Applicant provided adequate documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is granted.

Statement of the Case

On September 13, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on October 30, 2012. (Item 7) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On December 13, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on December 31, 2015. He admitted eight and denied four delinquent debts listed in the SOR. He elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on February 23, 2016. Applicant received a complete file of relevant material (FORM) on March 4, 2016, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant filed a timely reply to the FORM on March 9, 2016. (Item 8) I was assigned the case on June 9, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM agent (Item 4) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the PSI. Applicant did not object to admission of the PSI when he responded to the FORM. He has waived any objection to the admissibility of the PSI. I will consider information in the PSI in my decision.

Findings of Fact

I thoroughly reviewed the case file. I make the following findings of fact.

Applicant is 52 years old. He was born in Vietnam and came to the United States in March 1983. He became a United States citizen in November 1990. He married his first wife in June 1986. She passed away in October 2001. There were two children from this marriage. He married again in March 2007. There is one child from this marriage. The three children reside with Applicant and his second wife. He received a bachelor's degree in June 2009.

Applicant was employed as a process data analyst from November 1986 until December 2004 when he was laid off due to downsizing. He was unemployed from December 2004 until January 2006 when he was employed as a process quality assurance engineer. He received unemployment compensation while unemployed. He was laid off as a process quality engineer in April 2009 due to downsizing. He was unemployed from April 2009 until November 2011. He again received unemployment compensation while unemployed. He gained employment with a defense contractor in November 2011 as a senior quality engineer. The defense contractor is his sponsor for a security clearance. (Item 3, e-QIP; Item 7, PSI)

The SOR lists, and a credit report (Item 6, dated September 26, 2012) confirms the following delinquent debts for Applicant: three state tax liens for the same state for \$8,267 (SOR 1.a), \$2,893 (SOR 1.b), and \$8,350 (SOR 1.c); a judgment for \$580 (SOR 1.d); a judgment for \$2,349 (SOR 1.e); a debt in collection for \$175 (SOR 1.f); two debts in collection for the same agency for \$120 (SOR 1.g) and \$232 (SOR 1.h); a debt in collection for \$53 (SOR 1.i); a debt in collection for \$3,019 (SOR 1.j); a car repossession debt for \$8,319 (SOR 1.k); and a credit card debt in collection for \$6,247 (SOR 1.l). The total amount of the SOR-listed delinquent debt is approximately \$40,000.

The derogatory financial information was listed in Item 6, the September 26, 2012 credit report. There is no derogatory information in the credit reports submitted by the Government (Item 5, dated February 10, 2015; Item 4, dated February 23, 2016). The credit report Applicant provided in response to the SOR, also does not list delinquent accounts. (Response to SOR, Credit Report, dated December 22, 2015) Applicant reported the state tax liens and a car repossession debt on his e-QIP. The OPM security investigator in the PSI questioned Applicant extensively about the status of his finances. Applicant attributed his delinquent debts to two extensive lay-offs and the need to support his two young children on his salary alone after the death of his first wife. Applicant reports that he has been paying his delinquent accounts over time as best he was able.

Applicant took a loan from his 401K account in 2004. He was paying the loan back when he was laid off in 2009. Since he no longer worked for that company, he incurred a federal tax penalty for the withdrawal from his retirement account. A federal tax lien was placed account his accounts. He set up a payment plan with the Internal Revenue Service (IRS). He presented documentation with his response to the SOR that the federal tax lien was released in April 2013.

His 401K withdrawal also resulted in a state tax lien. He established a payment plan with the state tax office starting in March 2008. There was only one tax lien. The three listed state tax liens resulting in SOR 1.a, 1.b, and 1.c were listed for various amounts in the credit reports as the taxes were paid and reduced. He presented documentation in response to the FORM that the state tax lien was paid in full on December 22, 2015. (Item 7, PSI, dated October 13, 2012, at 8-9; Response to FORM, State Tax Letter, dated December 29, 2015)

In his response to the SOR, Applicant included documents to establish that the county tax lien at SOR 1.d was paid in full in February 2014. The same debt is also reported at SOR 1.j. He also included with his response to the SOR documents that the utility debts at SOR 1.g and 1.h, and the cable debt at SOR 1.i are paid in full and closed. (Item 7, PSI, dated October 13, 2012, at 8-9; Item 8, Response to FORM, State Tax Letter, dated December 29, 2015; Item 8, Credit Report Entry, dated December 22, 2015)

Applicant does not have any knowledge of the judgment debt at SOR 1.e. He does not remember ever receiving documents pertaining to a civil judgment. He

disputed this debt with the credit reporting agency. Applicant also disputed the telephone debt at SOR 1.f. He believes the debt related to a telephone debt for a residence he used from 1991 until 2005. He always paid the telephone bill in full and on time. He believes the debt was paid in full when the house was sold in December 2005. Since the debt is old, he does not have any documents to show the debt was paid. (Item 7, PSI, dated October 13, 2012 at 9)

The debt at SOR 1.k is for Applicant's automobile. When Applicant was laid off in 2009, he voluntarily returned the car to the dealer because he could no longer make the payments. The amount remaining on the debt was approximately \$4,200. He continued to pay the remaining debt until it was paid in full. He disputed the debt since it was paid. He does not have any documents to show the debt was paid. (Item 7, PSI, dated October 30, 2012, at 10)

The credit card debt at SOR 1.l was opened in 1995. Applicant believes the debt was paid in full as part of the settlement of the sale of the house in December 2005. (Item 7, PSI, dated, October 30, 2012 at 11) the debts at SOR 1.c, 1.e, 1.f, 1.k, and 1.l are not on Applicant's latest credit reports.

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 must be considered 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(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 applicant or proven by Department Counsel. . . ." The

applicant has the ultimate burden of persuasion for obtaining 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.

Analysis

Financial Considerations

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, thereby raising 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage finances to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has a history of delinquent debt as shown by credit reports, answers to financial questions on the e-QIP, and responses to financial questions from the security investigator. The information raises security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy debt.

I considered the following Financial Considerations Mitigating Conditions under AG ¶ 20:

(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 problems 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;

(d) the individual has initiated a good-faith effort to repay the 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.

Mitigating conditions AG ¶¶ 20(a), 20(b), 20(d), and 20(e) apply. Applicant incurred delinquent debt when he was twice laid off and then was unemployed for long periods of time. He also incurred debt when his wife passed away in 2001 and he had to provide for his two children on his salary alone. He acted responsibly and reasonably by continuing to pay his debts as best he could.

Applicant established his good-faith initiative to pay his debts. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation.

Applicant established a plan to pay the debts and showed a meaningful track record of debt payment. He presented sufficient documentation to establish he paid eight of the SOR debts. He claims to have paid two other debts in the past but he did not have the documents to verify the payments. Based on his meaningful track record of payment of the other debts, it is reasonable to conclude that he paid these two debts. He disputed the remaining two debts because he has no knowledge of the debts. The debts appeared on the earliest credit report but not on the latest credit reports. It is likely that the disputes have been resolved in Applicant's favor.

By paying and resolving his debts, Applicant has shown that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his finances. Applicant has shown that he is managing his personal financial obligations reasonably and responsibly, and his financial problems are behind him. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information, I conclude that Applicant has mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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. Applicant incurred delinquent debt due to conditions beyond his control, two job layoffs, long periods of unemployment, and the death of his first wife, and the need to support his children on his salary alone. He presented evidence that he paid or successfully disputed the delinquent debts listed in the SOR. Applicant presented sufficient information to meet his burden to establish that he acted reasonably and responsibly towards his finances, and that he will continue to responsibly manage his financial obligations. Overall, the record evidence leaves me without questions or doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated 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 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.

THOMAS M. CREAN
Administrative Judge