



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



In the matter of:

)
)
) ISCR Case No. 15-02114
)
)
)

Applicant for Security Clearance

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

08/09/2016

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 August 8, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his employment with a defense contractor. (Item 10) He was interviewed by a security investigator from the Office of Personnel Management (OPM) on November 20, 2007. (Item 12) Based on the OPM investigation, Applicant was granted eligibility for access to classified information. On December 6, 2012, Applicant submitted a new e-QIP to retain his security clearance. (Item 5) He was interviewed by an OPM security investigator on January 22, 2013. (Item 9) 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 November 1, 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 15, 2015. He admitted two and denied five of the delinquent debts listed in the SOR. He elected to have the matter decided on the written record. (Item 4) Department Counsel submitted the Government's written case on February 22, 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 April 3, 2016. (Item 13) 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 9) 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 the 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 58-years-old. He married in September 1997 and has two children. He received an associate's degree in 1979 and a bachelor's degree in December 1981. He was employed in various engineering positions until he was unemployed from September 2000 until January 2001. From January 2001 until January 2002, he was employed as an aviation engineer by a defense contractor. In January 2002, he started working for his present defense contractor employer as an aviation engineer. He has held various aviation engineering positions with the same company since January 2002. (Item 5, e-QIP, dated December 6, 2012; Item 9, PSI, dated January 22, 2013)

The SOR lists and credit reports (Item 6, dated February 12, 2016; Item 7, dated February 21, 2015; and Item 8, dated December 12, 2012) confirm the following financial security concerns for Applicant: failure to file federal and state income tax returns for tax years 2010 and 2011 (SOR 1.a); failure to submit state business tax forms for 2000 and 2001 (SOR 1.b); a state tax debt for 2000 and 2001 (SOR 1.c); a

credit card debt for \$60 (SOR 1.d); and three medical delinquent debts for \$451 (SOR 1.e), \$223 (SOR 1.f), and \$210 (SOR 1.g). The delinquent debts total approximately \$1,000.

Applicant reported the failure to file his federal and state tax returns for 2010 and 2011 on his e-QIP. He attributed his failure to timely file his tax returns to the unavailability of his financial records for this period. He also believed that he had time to file the returns since he was anticipating a refund. He also reported a lien that was not included in the SOR and has been satisfied. (Item 5, e-QIP, dated December 6, 2012)

Applicant provided sufficient documents to establish that the state and federal taxes returns for 2010 and 2011 have been filed. (SOR 1.a) Applicant was able to gather the records he needed to file his federal and state tax returns for the tax years in question. He employed a certified public accountant (CPA) to assist him in preparing and filing his tax returns. The tax returns were filed in March 2014. He received a refund from his taxes. (Item 13, Response to FORM, Attachment B at 1 - 12)

Applicant and his wife opened a franchise ice cream business in 2001. His wife had a complicated pregnancy and he was laid-off from his engineering position with an aviation company. Applicant was hired by his present employer in another state far removed from the state where the business was located. He could no longer operate the business from a different location and arranged for the sale of the business. In his response to the FORM, Applicant provided documents showing that on the sale of the business in 2003, the new franchisee assumed responsibility for the business debts. The responsibility for filing the state business tax form listed at SOR 1.b was transferred to the new franchisee. The new owner was also responsible for all business debts including any state taxes owed. (SOR 1.c) State tax documents show that the sale of the franchise resolves the business taxes for Applicant (Item 13, Response to FORM, Attachment A, at pages 1-4)

Applicant was not aware of a credit card debt as noted at SOR 1.d. He has a credit card from the company, so he contacted the credit card company. He provided documents that he is current with his payments on the credit card. (Item 13, Response to the FORM, Attachment C, at 7 -8)

Applicant was not aware of the medical debts at SOR 1.e, 1.f, and 1.g until he was informed of them by the OPM security investigator. He thought the bills had been paid by his health insurance. He contacted the medical creditors and resolved the three debts. The \$451 medical debt at SOR 1.e was to a hospital and was paid and resolved in March 2016. (Item 13, Response to the FORM, Attachment C, at 1-2) The \$223 debt at SOR 1.f was to a doctor and was paid and resolved in November 2015. (Item 13, Response to FORM, Attachment C, at 3 and 6) The \$210 debt at SOR 1.g was for an anesthesiologist and was paid and resolved in November 2015. (Item 13, Response to FORM, Attachment C, at 4-5)

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 and failure to file tax returns as required 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), AG ¶ 19(c) (a history of not meeting financial obligations), and AG ¶ 19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same). 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.

The mitigating conditions apply. The behavior causing the financial issues happened long ago, was infrequent, largely beyond Applicant's control, and occurred under unusual circumstances that are not likely to recur. Applicant did not have all the documents required for him to file his federal and state taxes on time because he had moved. He gathered the required documents, hired a CPA, and filed his tax returns. He received a refund on his taxes when the returns were filed. Applicant also owed state business taxes from a business that he and his wife operated as a franchisee. When he could no longer manage the business because he had been transferred out of the state by his primary employer, the business was sold and the new buyer assumed responsibility for the business debts including the state business taxes. Applicant acted responsibly under the circumstances by filing his tax returns and resolving the debt.

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 provided sufficient documents to establish that there is no credit card debt due and that he paid the three medical debts. By paying his debts, Applicant showed a meaningful track record of debt payment, and that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his finances. Applicant has met his burden to show 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 circumstances largely beyond his control. He presented evidence that he paid or resolved the financial issues listed in the SOR. Applicant established 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.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.

THOMAS M. CREAN
Administrative Judge