



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



In the matter of:)
)
) ISCR Case No. 15-02517
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On November 22, 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; 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 responded to the SOR on February 7, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on April 25, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on May 3, 2016. As of July 8, 2016, he had not responded. The case was assigned to me on April 11, 2017. The Government exhibits included in the FORM are admitted in evidence.

Findings of Fact

Applicant is a 55-year-old employee of a defense contractor. He has worked for his current employer since 2005. He served on active duty in the U.S. military from 1981 to 1985. He is a high school graduate. He is married with two adult children and an adult stepchild.¹

Applicant developed financial problems in the 1990s, which he attributed to his and his wife's financial irresponsibility. He filed a Chapter 7 bankruptcy case in 1997, and his debts were discharged in 1998.²

Applicant left a job in 2005 that he had held since 1987, and moved his family to another state where he thought he had another job waiting for him, and it was a better environment to raise his children. The housing market was booming, and he bought a house at the new location before selling the old house. The job opportunity fell through, and he had to accept a job at a much lower salary. He was unable to sell the old house, the housing market slowed, then crashed, and he was unable to maintain the payments on two mortgage loans. The old house was lost to foreclosure.³

The SOR alleges four delinquent debts. The debts are listed on a credit report from December 2012. Applicant denied all the allegations. He stated that he had been working to get the debts removed from his credit report for over seven years without success.⁴

SOR ¶ 1.a alleges "an account that is 120 days or more past due in the approximate amount of \$544 and has a balance of \$5,231." A credit report from 2007 shows this account as \$544 past due with a credit limit of \$5,231. The date of last activity was August 2006. There was a zero balance, but a note indicated that \$3,373 was charged off. A credit report from 2012 had similar information, except it did not list an amount that was charged off. The debt is not listed on credit reports from February 2015 and September 2015.⁵

The \$229 debt alleged in SOR ¶ 1.b is to a collection company on behalf of a public utility in a state where Applicant has not lived since 2005. The 2012 credit report

¹ Items 5, 10, 11.

² Items 9, 11.

³ Items 5-8, 10.

⁴ Items 4, 8.

⁵ Items 4, 6-10.

listed the debt as opened in September 2008, with a date of last activity of November 2008. The debt is not listed on the February 2015 and September 2015 credit reports.⁶

The 2012 credit report listed the debt alleged in SOR ¶ 1.c as a past-due auto loan with a \$3,333 balance. It listed the account as opened in November 2006, with a date of last activity of February 2010. The debt is not listed on the February 2015 and September 2015 credit reports.⁷

SOR ¶ 1.d alleges a \$13,179 debt that is being pursued by a collection company. The 2012 credit report listed the account as opened in December 2007, with a date of last activity of May 2010. A 2007 credit report listed a \$13,179 debt to a different creditor. The date of last activity is May 2006. Applicant admitted owing that debt at one time. These may be the same debts. If they are the same debt, it is older than reflected in the 2012 credit report. The debt is not listed on the February 2015 and September 2015 credit reports.⁸

Applicant reported several delinquent accounts on his Questionnaire for National Security Positions (SF 86), which he submitted in November 2012. The only debt from the SOR that he addressed was the debt alleged in SOR ¶ 1.a. He wrote the “account [was] closed as a profit and loss writeoff,” and that the account was resolved in September 2008. He reported a \$228 debt that may be the same debt as the \$229 debt alleged in SOR ¶ 1.b, but under a different collection company. Applicant wrote that he thought the debt was paid in 2008.⁹

Applicant was asked about his finances during a background interview in January 2013. He discussed his history of financial problems. The investigator asked him about debts from the 2012 credit report, including the four debts alleged in the SOR. Applicant was only able to identify the debt alleged in SOR ¶ 1.a. He thought the account was tied in with the foreclosure of his old house. He stated that his wife handled the family’s finances, and that their finances were improving.¹⁰

The February 2015 and September 2015 credit reports only list three accounts, and none of the accounts were delinquent. The September 2015 credit report, which is the most recent report available, shows the three listed accounts as paid and closed with zero balances.¹¹

⁶ Items 4, 6-10.

⁷ Items 4, 6-8, 10.

⁸ Items 4, 6-10.

⁹ Item 5.

¹⁰ Item 10.

¹¹ Items 6, 7.

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, 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."

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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:

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. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was unable or unwilling to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(b) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;
- (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
- (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 had financial problems in the 1990s and the mid-2000s. He admitted that the 1990s problems were due to his and his wife's financial irresponsibility. Those problems were resolved through a Chapter 7 bankruptcy case. In 2005, he took a chance, left a long-time job, and moved to another state for a job that did not materialize. He also bought a house at the new location before selling the old house.

All of the SOR debts are at least seven years old, and none of them are listed on the two 2015 credit reports. The September 2015 credit report only listed three accounts, which were listed as paid and closed with zero balances.

Applicant may be responsible for the SOR debts. However, even if they were his debts, they are old and no longer on his credit report. Debts remain a continuing course of conduct for as long as they remain unpaid. However, at some point debts get old, fall off credit reports, are no longer actively collected, and they are less telling about an applicant's security worthiness. Applicant's finances were stable as of the most recent information available, and had been for some time. Concerns about Applicant's finances are mitigated.

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 this whole-person analysis.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. 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.d:	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.

Edward W. Loughran
Administrative Judge