



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



In the matter of:

ISCR Case No. 15-02668

Applicant for Security Clearance

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel

For Applicant: *Pro se*

01/30/2017

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 November 19, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD CAF 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).

Applicant answered the SOR on December 22, 2015, and requested a hearing. The case was assigned to me on May 12, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 22, 2016, setting the hearing for

August 24, 2016. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. The exhibit index was marked as a hearing exhibit (HE I). Applicant testified and offered exhibits (AE) A-G, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional evidence. He submitted AE H-I, which were admitted without objection. DOHA received the hearing transcript (Tr.) on September 1, 2016.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the debts listed in the SOR. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.¹

Applicant is 65 years old. He has worked for various federal contractors since 2003. He is divorced with three adult children. He pays \$900 monthly to his ex-wife in alimony. He has a bachelor's degree.²

The SOR lists five delinquent debts totaling approximately \$25,764 and a bankruptcy. The debts included a collection resulting from a car repossession, three student loans in collection, and a medical collection account. The debts are supported by a credit report from August 2014 and by his statements to a defense investigator in September 2014. The bankruptcy is supported by court documents related to his 2002 Chapter 7 bankruptcy case.³

Applicant's debts that resulted in him filing for bankruptcy were mainly caused by his ex-wife's extensive use of credit cards. Four of the five SOR debts resulted from Applicant helping out his children by co-signing student loans for his son and daughter and co-signing on a car loan with his son. When the respective children failed to make the payments, Applicant was held financially responsible for the debts. His current finances are in good shape and he typically has a \$2,000 remainder after all expenses are paid every month. He documented that he is current on his two credit card accounts with both balances under \$1,000.⁴

¹ Answer.

² Tr. at 5, 45; GE 1.

³ GE 3-5.

⁴ Tr. at 38,40-42, 45-46; AE A, D.

The status of the debts is as follows:

SOR ¶ 1.a (car repossession account for \$8,612):

Applicant made payments on his son's car loan account up until about 2010. The car was repossessed, and he did not hear anything further from the creditor. This debt is unresolved, but not being pursued.⁵

SOR ¶ 1.b (student loan collection account for \$6,186):

Applicant was paying this student loan for his daughter because he was a co-borrower on the loan. He made many payments on the loan, which is corroborated by the reduced balance (\$1,844) showing on the most recent credit report. He contacted the collection service about payments and believed this was resolved. This debt is unresolved, but not being pursued.⁶

SOR ¶ 1.c - ¶ 1.d (student loan collection accounts for \$5,725 and \$2,030):

Applicant documented payments toward these two student loans for \$15,370. Once again, Applicant was obligated to pay these student loans when he became a co-borrower with his son and daughter and they both defaulted on the loans. These two debts do not appear on his latest credit report. These debts are resolved.⁷

SOR ¶ 1.e (medical collection account for \$3,211):

Applicant provided documentation showing he is making monthly payments of \$75 and the balance owed is now \$735. This debt is being resolved.⁸

Applicant provided a letter of appreciation and a certificate of appreciation from his employer and his customer. Both commend him for exemplary performance in the conduct of his duties.⁹

⁵ Tr. at 38-39.

⁶ Tr. at 40-41; AE A.

⁷ Tr. at 41-42; AE A, C, H.

⁸ Tr. at 42; AE I.

⁹ AE E-F.

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 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, 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an 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 Executive Order 10865 provides that 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

AG ¶ 18 expresses the security concern for 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, 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. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both the disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's largest debts came about because he co-signed on a car loan and student loans for his son and daughter. He made significant efforts to pay these debts. His prior bankruptcy was due in large part to overuse of credit cards by his ex-wife. These type of debts are unlikely to recur and they do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) partially applies. Applicant provided financial support for his children by co-signing on their respective loans. These were voluntary acts on his part and therefore not beyond his control. He did show responsible action by completing payments on two of the student loans and making significant payments on one other student loan and on the repossessed car loan. He receives some credit for his efforts under AG ¶ 20(b). There is no evidence of financial counseling. He documented that his debts are under control by showing proof of payments for the student loan debts, the car repossession debt, and monthly payments toward the medical debt. His current finances are in good order. He receives some credit under AG ¶¶ 20(c) and 20(d).

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 the 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 guideline 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 considered the circumstances that led to Applicant's financial problems and his personal situation. The evidence supports Applicant's track record of financial stability.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations.

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.f: 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