



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



In the matter of:

ISCR Case No. 15-02833

Applicant for Security Clearance

Appearances

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: *Pro se*

08/03/2016

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 January 7, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for employment with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on February 5, 2013. (Item 3) 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 14, 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 denied three (SOR 1.a, 1.b, and 1.c) of the delinquent debts listed in the SOR. He admitted the remaining debt. (SOR 1.d) He elected to have the matter decided on the written record. (Item 6, dated January 14, 2016) Department Counsel submitted the Government's written case on January 15, 2016. Applicant received a the file of relevant material (FORM) on February 10, 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. (Item 7) 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 a 37-year-old, and has been an electrician for a defense contractor since March 2012. He was born in Peru and came to the United States in September 1996. He served in the United States military from April 1999 until May 2005, including a tour in Iraq. He received an honorable discharge as a sergeant (E-5). Based on his military service, he became a United States citizen in October 2004. He married in September 2000 and divorced in 2010. He has one child from this marriage and is current with is child support obligations. He married again in April 2012. (Item 2, e-QIP; Item 4, PSI)

The SOR lists and credit reports (Item 4, dated March 12, 2015; and Item 5, dated January 18, 2013) confirm the following delinquent debts for Applicant: a foreclosed mortgage debt past due for \$106,173 (SOR 1.a); a leased car debt for \$6,608 (SOR 1.b); a telephone service debt in collection for \$561 (SOR 1.c); a mortgage debt charged off (SOR 1.d); and a cable television and telephone debt in collection for \$207 (SOR 1.e). The total amount of the delinquent debt is approximately \$113,000. The majority of the debt is from the foreclosed mortgage debt.

Applicant reported the delinquent debts 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 circumstances from the separation and divorce from his first wife. In response to the FORM, Applicant provided documents to establish payment of the delinquent debts.

Applicant and his first wife purchased a house when they married. The debts listed at SOR 1.a and 1.d are for the same mortgage. The house lost value in the housing crisis in 2008. Applicant was able to accomplish a short sale of the house and the mortgages have been satisfied. (Response to FORM, Bank Documents, dated March 11, 2016, and settlement notice dated January 28, 2013) Applicant and his wife leased a car for his mother-in-law to use. The car was returned at the end of the lease in August 2007 with high mileage resulting in an additional charge of \$6,608. Applicant settled the debt with the car manufacturer. (Response to FORM, Car Dealer Letter, dated March 11, 2016)

Applicant disputed the debt to the telephone company. The dispute was settled by the creditor in Applicant's favor and removed from his credit report. (Response to FORM, letter, dated March 14, 2016)

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.

The mitigating conditions apply. Applicant incurred delinquent debt when he and his first wife divorced. The house they purchased lost value in the 2008 housing crises. He leased a car for his mother-in-law but she used it more than allowed under the lease resulting in an additional charge. He disputed a telephone bill and the company resolved it in Applicant's favor. Applicant acted responsibly and reasonably by working with his creditors to settle, resolve, and dispute the debts. 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 he resolved and paid all of the SOR delinquent debts. He showed a meaningful track record of debt resolution. By paying or 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 his separation and divorce and the housing market crisis in 2008. He presented evidence that he paid or resolved all of the delinquent debts listed in the SOR. Applicant presented sufficient information 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.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.

THOMAS M. CREAN
Administrative Judge