



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



In the matter of:

ISCR Case No. 15-02850

Applicant for Security Clearance

Appearances

For Government: Daniel F, Crowley, Esq., Department Counsel

For Applicant: *Pro se*

02/28/2017

Decision

CREAN, Thomas M., Administrative Judge:

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

Statement of the Case

On July 16, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain 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 August 11, 2014. (Item 5) 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 27, 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; Department of Defense 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 February 1, 2016, admitting the five delinquent debt allegations with explanation. He elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on March 28, 2016. (Item 8) Applicant received a complete file of relevant material (FORM) on March 30, 2016, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely filed a response to the FORM. (Item 9) I was assigned the case on February 13, 2017.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM agent (Item 5) 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 summary. In his response to the FORM, Applicant did not object to consideration of the PSI. Any objection to the information is waived. I will consider information in the PSI in my decision.

Findings of Fact

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 56 years old. He graduated from high school in 1978, and received his bachelor's degree in civil engineering in 1982. He served in the Navy from April 1983 until February 1992 when he was honorably discharged. He held a number of different positions including part-time school teacher, and self-employed as a restaurant owner. In 2014, he started working with a defense contractor as a construction surveillance technician. The defense contractor is his sponsor for a security clearance. He continued also to be self-employed. He married in September 1983 and has three grown children (Item 3, EQIP, dated July 16, 2014; Item 5, PSI, dated August 11, 2014)

The SOR alleges, and credit reports (Item 4, dated August 5, 2014; Item 6, dated March 6, 2014; and Item 7, dated October 20, 2015), and Applicant's admissions (Item 2, Answer to SOR, dated January 30, 2016, and Item 9, Response to FORM, dated May 30, 2016) confirm the following delinquent debts for Applicant: a cable television debt in collection for \$119 (SOR 1.a); a federal tax lien for \$38,148 (SOR 1.b); a judgment for an individual for \$1,130 (SOR 1.c); a telephone service debt in collection for \$115 (SOR 1.d); and a debt to a car towing service in collection for \$2,470 (SOR 1e). The total amount of the delinquent debt is approximately \$42,000.

Applicant was late in paying three small service debts. He rented a duplex to a tenant who had a pet that soiled the carpet. Applicant did not return the security deposit until the tenant had the carpet professionally cleaned. The tenant filed a small claim against Applicant for the cost of the carpet cleaning. Applicant was required to return the amount of the carpet cleaning. Applicant no longer owns the duplex. Applicant presented documents in his response to the SOR that he paid the television service debt at SOR 1.a (Item 2, Encl. 2); the judgment for the carpet cleaning at SOR 1.c (Item 2, Encl. 4); the telephone debt at SOR 1.d (Item 2, Encl. 5); and the car towing service debt at SOR 1.e (Item 2, Encl. 6).

Applicant and his wife owned a small restaurant. In 2011, the business was audited by both the state tax authority and the Internal Revenue Service (IRS). Applicant hired a professional tax service to assist him in correctly filing and completing his federal and state taxes. (Item 2, Response to SOR) Applicant had used the incorrect accounting method for the business resulting in Applicant owing over \$86,000 in federal and state taxes for tax years 2007 to 2010. (Item 2, Encl. 3) The state and IRS entered tax liens against Applicant. Applicant enrolled in courses in March and April 2012, monitored by the state tax authority and the IRS, that provided him the education needed to correctly report his business income and expenses.

Applicant reached an agreement to pay his back state taxes. The state tax lien was released in May 2014 (Item 9, Response to FORM, at Attachment G). Applicant entered an agreement with the IRS to pay his back federal taxes. Applicant completed the agreement and the federal tax lien at SOR 1.b was paid in full in May 2016. (Item 9, Response to FORM, at Attachments G and H)

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. (AG ¶ 18) An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his 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 meet their financial obligations. 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 required to manage his or her finances in such a way as to meet financial obligations.

Credit reports reveal and Applicant admitted that he had five delinquent debts, including a federal tax lien and a judgment. The evidence is sufficient to raise 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 information raises an issue about Applicant’s willingness and ability to meet his financial obligations. Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration 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;
- (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 has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

All of the mitigating conditions apply. Applicant's delinquent debts were incurred under circumstances that are unlikely to recur. Applicant used an incorrect accounting method to determine his business taxes. An audit resulted in a lien for federal taxes. Applicant took courses to learn about the correct accounting method to use. He was late in paying three small debts, and a judgement to return a security deposit was filed by a tenant. Applicant no longer owns the property. The events resulting in the debts were caused by conditions largely beyond his control. Applicant acted responsibly by developing and completing a plan to pay his debts. He received financial counseling by attending classes to learn the correct accounting methods for his business. There is a clear evidence that his financial problems have been resolved and his finances are under control.

Applicant presented sufficient evidence that his delinquent debts in the SOR are paid in full and all liens are released. Applicant has shown that he acted reasonably and responsibly in regard to his financial obligations. His financial problems are under control. His reasonable and responsible action towards his finances is a strong indication that he will protect and safeguard classified information. Applicant presented sufficient information to mitigate financial security concerns.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information must be an overall common-sense 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 considered Applicant's nine years of service in the Navy. Applicant provided sufficient credible documentary information to show that he incurred delinquent debt by conditions beyond his control. He established that he took reasonable and responsible action to resolve his financial obligations by making all of the payments required under a payment plan. His delinquent debts are paid in full. Applicant demonstrated appropriate management of his finances and a record of action to resolve financial issues. Overall, the record evidence leaves me without questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has established his suitability for access to classified information. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial situation.

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.e: 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 access to classified information. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge