



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



In the matter of:)
)
) ISCR Case No. 15-02976
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

12/15/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On December 16, 2015, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on January 4, 2016, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM) and it was mailed to Applicant. It was received on March 4, 2016. Applicant was afforded an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days from receipt of the FORM. Applicant did not object to the Government's evidence, which are identified as Items 2 through 6. Applicant did not provide additional material. The Government documents are admitted into evidence without objection. The case was assigned to me on November 4, 2016.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d, and 1.f. He denied the allegations in SOR ¶¶ 1.c, 1.e, 1.g, and 1.h. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 52 years old. He was briefly married in 1985 and divorced. He remarried in 2005 and has been separated from his wife since 2009. He has an adult child from a previous relationship. He served in the Air Force from 1983 to 1991 and was honorably discharged. He has been steadily employed from 1992 to the present.¹

Applicant completed a security clearance application (SCA) in January 2013 and was interviewed by a government investigator in February 2013. In his answer to the SOR, he stated he had settled the judgment in SOR ¶ 1.a in July 2014, and he also settled the judgment in ¶ 1.b, but did not provide a date. He indicated he paid the accounts or settled the debts in ¶¶ 1.d, 1.e and 1.f. His January 2013 credit report reflects the above debts. His credit report from March 2015 reflects the judgment in SOR ¶ 1.a, but the February 2016 credit report does not. His credit reports from March 2015 and February 2016 do not reflect the other debts noted above. All of these debts are resolved in his favor.²

Applicant disputed the debt in SOR ¶ 1.g stating this account is from the same creditor as in SOR ¶ 1.f, and it was paid. Neither debt is reported on his two most recent credit reports. In his background interview, Applicant indicated the account in SOR ¶ 1.h did not belong to him, and when he contacted the creditor he was advised the account did not exist. It is not reported on his two most recent credit reports. During his background interview, Applicant acknowledged that the account in SOR ¶ 1.c was opened by his wife after they separated. He indicated he intended to pay it. It is not reported on his two most recent credit reports.³

Applicant attributed his past financial problems to his wife controlling their finances and spending beyond her means. She used his Social Security number and opened credit cards in his name. A review of Applicant's February 2016 credit report

¹ Item 2.

² Items 2, 3, 4, 5, 6.

³ Items 2, 3, 4, 5, 6.

reflects that all of his accounts are being paid on time and there are no negative reports.⁴

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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

⁴ Items 3, 4.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁵

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant experienced financial difficulties in the past, which resulted in delinquent debts and judgments. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business

⁵ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

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;

(d) the individual initiated a good-faith effort to repay 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.

Applicant acknowledged he had delinquent debts as a result of his wife's excessive spending. He indicated in his answer to the SOR that he paid, settled, or disputed the alleged debts. He and his wife have been separated since 2009. None of the debts alleged in the SOR are on his most recent credit report. Future financial problems are unlikely to recur. His past financial problems do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies.

Applicant attributed his financial problems to his wife's overspending. This was somewhat within his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has not lived with his wife since 2009 and manages his finances separately. His two most recent credit reports show he is paying his bills on time, and he has resolved his past financial problems. AG ¶ 20(b) applies.

There is no evidence Applicant received financial counseling. There are no delinquent debts reflected on Applicant's most recent credit report. Applicant indicated that he paid, settled, or resolved the alleged delinquent debts. There are clear indications his financial problems are resolved, and he is living within his means. AG ¶¶ 20(c) and 20(d) apply. Those debts Applicant disputed as paid or settled are no longer reported on his credit report. AG ¶ 20(e) applies to those debts.

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 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 my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 52 years old. He is a military veteran and has been steadily employed since 1992. He experienced financial difficulties because of his wife's spending habits. He has been separated from her since 2009 and manages his finances separately. The debts alleged in the SOR are paid, settled, or resolved, and are not reported on his most recent credit report. He is timely paying his expenses. Applicant has met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. 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.h: 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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge