



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



In the matter of:)
)
) ISCR Case No. 15-03689
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Kevin M. McNeil, Esq.

09/13/2016

Decision

CURRY, Marc E., Administrative Judge:

Applicant's financial problems were caused by circumstances beyond his control. He has either paid his delinquent debts or caught up with the monthly bills that were delinquent. I conclude that he has mitigated the security concern. Clearance is granted.

Statement of the Case

On January 17, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant 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; Department of Defense 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. On March 11, 2016, Applicant answered the SOR, admitting the allegations and requesting a hearing, whereupon the case was assigned to me on June 6, 2016. DOHA issued a notice of hearing on June 23, 2016, scheduling the hearing for July 19, 2016. The hearing was held as scheduled. Department Counsel submitted four

exhibits that I identified and received as Government Exhibit (GE) 1 through GE 4. Also, I took administrative notice of Department Counsel's discovery letter to Applicant, dated April 8, 2016 (Hearing Exhibit (HE) I). I received seven exhibits that Applicant submitted (AE A - G). At the close of the hearing, I left the record open, at Applicant's request, to allow him the opportunity to submit additional exhibits. Within the time allotted, he submitted five additional exhibits that I admitted and incorporated into the record as AE H through AE L. DOHA received the transcript (Tr.) on July 27, 2016.

Findings of Fact

Applicant is a 63-year-old married man with one adult child and two adult stepchildren. He earned a bachelor's degree in automated management technologies in 1992. Since 2010, he has been working for a defense contractor as a systems administrator. (Tr. 11)

Applicant is well-respected by his colleagues and supervisors. His current supervisor characterizes him as an honest, reliable man of sound judgment. (AE C) Coworkers describe him as a positive individual with a good work ethic. (AE D and AE E)

The SOR alleges seven debts totalling approximately \$140,000. Approximately \$138,500 constitute student loans (subparagraphs 1.c-1.f) Applicant attributes his difficulty handling his finances to the expenses associated with multiple back surgeries that he underwent between 2000 and 2005. In sum, he paid approximately \$15,000 to \$20,000 in medical co-pay expenses. More recently in 2009, his stepdaughter was diagnosed with complex reflex dystrophy syndrome, a degenerative disease that rendered her wheelchair-bound. (Tr. 35) Applicant spent approximately \$5,000 per year helping to care for her. (Tr. 36) Currently, he is no longer responsible for supporting her. (Tr. 35)

Applicant has gradually either satisfied his delinquent debts or is paying them timely. Specifically, Applicant satisfied the debt alleged in subparagraph 1.a, a medical bill for \$680, several years ago. When he discovered that it still appeared on his credit report, he formally disputed it. The credit bureau investigated the charge, resolved it in Applicant's favor, and removed it from the credit report. (AE I at 3; Tr. 27) Similarly, he satisfied subparagraph 1.b, another old medical bill (totalling \$416), and successfully disputed its continued appearance on his credit report. (AE I at 1)

SOR subparagraphs 1.c through 1.e are student loan accounts. Applicant has been making regular monthly payments on his student loan accounts since August 2014. (AE J, AE K) Per his federal income tax statements, he has paid nearly \$10,000 of student loan payments since 2014. (AE L) His student loan payments are current.

Applicant satisfied subparagraph 1.f, an old phone bill totalling \$552. When he discovered its continued appearance as delinquent on his credit report, he successfully disputed it, whereupon the credit bureau removed it. (AE I at 2) Applicant contends that

he satisfied the debt alleged in subparagraph 1.g, totalling \$247, but provided no documentation.

Applicant earns \$115,000 annually. He has \$900 of monthly discretionary income and approximately \$40,000 invested in a retirement plan. (Tr. 30, 33)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 debt; and

(e) the individual has a reasonable basis to dispute the legitimacy of a 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 action taken to resolve the issue.

The cost of multiple back surgeries, together with the cost of care for his chronically disabled stepdaughter, contributed to Applicant's financial problems. His student loans, as alleged in subparagraphs 1.c through 1.e, are now current. After paying subparagraphs 1.a, 1.b, and 1.f, he successfully disputed their appearance on his credit bureau report.

Applicant did not provide documentary evidence supporting his contention that he satisfied the debt alleged in subparagraph 1.g. However, given its minimal amount, and the fact that he provided comprehensive, documentary evidence that he has either paid or is making payments on all of the other SOR debts, I consider his contention to be credible. Ultimately, upon considering the conditions that resulted in the financial problem, Applicant's steps to remedy the problem, and his ample discretionary income, I conclude that all of the mitigating conditions apply. Applicant has mitigated the financial considerations security concern.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

In addition to the surrounding circumstances of Applicant's incurrence of delinquent debt, the presence of rehabilitation, and the minimal likelihood of recurrence, I also considered Applicant's sterling character references in reaching my decision.

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.g: 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.

MARC E. CURRY
Administrative Judge