



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



In the matter of:)
)
) ISCR Case No. 15-03735
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

10/21/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, and he mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On November 27, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). The action was taken 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on December 21, 2015, and requested a hearing before an administrative judge. The case was assigned to me on May 5, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 20, 2016, scheduling the hearing for June 23, 2016. The hearing was convened as

scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, called three witnesses, and submitted Applicant's Exhibits (AE) A through J, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that were marked AE K and L and admitted without objection. DOHA received the hearing transcript (Tr.) on July 5, 2016.

Findings of Fact

Applicant is a 52-year-old employee of a defense contractor. He has worked for his current employer since 2008. He worked for the same employer from about 2003 until he was laid off in 2007. He is applying for a security clearance. He attended an alternative high school. He has been married and divorced three times. He has two children, ages 31 and 22.¹

Applicant has suffered from significant medical issues affecting his head and brain since 2005. The condition caused seizures and memory problems. He had 14 surgeries and numerous x-rays, MRIs (magnetic resonance imaging), CT (computerized tomography) scans, and other scans. He missed more than two years of work due to his medical problems. His medical bills were about \$1.25 million. He had medical insurance that covered most of the costs, but he estimated that he paid between \$10,000 and \$20,000.²

Applicant had a difficult time keeping track of all his medical bills and some bills went unpaid, either because they were not properly submitted to his insurance carrier or Applicant could not pay his share. Several non-medical bills also became delinquent.³

The SOR alleges an \$11,782 delinquent medical debt; 22 additional mostly unidentified medical debts totaling \$6,944; a \$3,039 delinquent car loan; two miscellaneous debts totaling \$782; and a \$171 debt that might be a medical debt. The October 2014 combined credit report listed 20 of the SOR debts, as reported by Experian, TransUnion, or Equifax. The remaining debts were listed on the November 2015 Equifax credit report.⁴

Applicant's medical issues stabilized in about August 2015. In about December 2015, he retained the services of an accountant/financial advisor to assist him in resolving his financial problems. They put together a plan in which they would ensure he was paying his current bills, validate older debts, dispute debts that were inaccurately reported, and initiate payment plans for his legitimate debts. He paid several debts and

¹ Tr. at 44-47, 68; GE 1.

² Tr. at 18-20, 33, 47-52; Applicant's response to SOR; GE 4; AE D-F, H, J.

³ Tr. at 49-55, 63-64; Applicant's response to SOR; GE 2-4; AE J.

⁴ GE 2, 3.

successfully disputed others. The most recent credit reports list a small fraction of the debts on previous reports.⁵

Applicant's car was "totaled" in a car accident in about 2008. He had collision insurance that covered the value of the car, which was less than what was owed on the car loan. He also had gap insurance that should have paid the difference between the value of the car and what was owed on the loan. However, the gap insurance failed to pay the difference, and Applicant was initially held liable. He continued to pay the loan after the accident, and he reduced the balance from \$9,895 to \$6,757. The gap insurance was finally applied, but the company used incorrect data, resulting in it inaccurately showing that Applicant still owed \$2,950 (SOR ¶ 1.z). The financial advisor is working to correct the matter.⁶

Applicant satisfied the \$366 credit card debt alleged in SOR ¶ 1.t in August 2016. The collection company handling the \$416 telecommunications debt alleged in SOR ¶ 1.u reported that they have "ceased collection of this account." Applicant testified that he intends to pay all of his legitimate debts.⁷

Applicant completed a Questionnaire for National Security Positions (SF 86) in August 2014. He reported multiple medical debts under the financial questions. There was some problem with the SF 86, and Applicant was asked to complete another SF 86 in September 2014. He updated the questionnaire, but everything he inputted in August was not saved. When he resubmitted the SF 86, he did not realize that the information about his medical debts was not saved and was not reported on the September 2014 SF 86. He did not intentionally falsify the September 2014 SF 86.⁸

Applicant called a witness attesting to his excellent job performance. He is praised for his trustworthiness, reliability, and judgment.⁹

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 to be used in evaluating an applicant's eligibility for access to classified information.

⁵ Tr. at 22-30, 39, 61-64, 71; Applicant's response to SOR; GE 2-3; AE A, B, G.

⁶ Tr. at 23-25, 41-42; GE 2-4; AE C.

⁷ Tr. at 31-32, 53-54, 63-65; GE 2, 3; AE K, L.

⁸ Tr. at 18-21; Applicant's response to SOR; GE 1; AE I.

⁹ Tr. at 67-69.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel." The applicant 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 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.

Section 7 of EO 10865 provides that adverse 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

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant had delinquent debts that he was unable to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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 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's financial problems were the result of his significant medical problems. Over the course of about ten years, he had 14 surgeries and he missed more than two years of work. His medical bills were about \$1.25 million, and he paid between \$10,000 and \$20,000.

Applicant retained the services of an accountant/financial advisor. He paid several debts and successfully disputed others. The three non-medical debts are resolved. The most recent credit reports list a small fraction of the debts on previous reports. He intends to pay all of his legitimate debts. Financial considerations security concerns are mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally provide false information on the SF 86. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

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 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 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 Guidelines E and F in my whole-person analysis.

I considered Applicant's favorable character evidence, the significant medical issues that caused his financial problems, and the steps he has taken to resolve them. He has a plan to resolve his financial problems, and he has taken significant action to implement that plan.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, and he mitigated the financial considerations security concerns.

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.aa:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	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.

Edward W. Loughran
Administrative Judge