



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



In the matter of:)
)
) ISCR Case No. 15-03847
)
Applicant for Security Clearance)

Appearances

For Government: Candace Garcia, Esq., Department Counsel
For Applicant: *Pro se*

03/02/2017

Decision

CURRY, Marc E., Administrative Judge:

Applicant has paid two of the three debts alleged in the Statement of Reasons (SOR) and is working with an attorney to resolve the one that remains outstanding. I conclude he has mitigated the financial considerations security concern. Clearance is granted.

Statement of the Case

On November 13, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued an 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 (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.

On January 19, 2016, Applicant answered the SOR, admitting the allegations and requesting a hearing before an administrative judge from the Department of Defense Office of Hearings and Appeals (DOHA), and the case was assigned to me on October 19, 2016. DOHA issued a notice of hearing on December 8, 2016, scheduling the hearing for December 20, 2016.¹ The hearing was held as scheduled. At the hearing, I received six Government exhibits (GE 1 - GE 6), and three Applicant exhibits (AE A - AE C). DOHA received the transcript (Tr.) on December 28, 2016.

Findings of Fact

Applicant is a 38-year-old married man with two children, ages 19 and 11. He has been married for 13 years, but has been separated from his wife since 2006. He was married previously for six months in 2000. Applicant served in the Marine Corps from 1999 to 2006. He was honorably discharged. (Tr. 12) While in the Marines, he served in two combat deployments. (Tr. 12) Recently, Applicant enrolled in college, where he intends to major in mechanical engineering. (Tr. 13) For the past nine years, Applicant has worked for a defense contractor. His duties include aviation maintenance. (Tr. 13-14)

The SOR alleges three delinquent debts totaling approximately \$14,300. SOR subparagraph 1.a, the most significant delinquency, totalling \$13,941, stems from a car loan that Applicant cosigned with his sister in 2009. (Tr. 20) In 2010, she defaulted on the loan and voluntarily returned the car. In 2011, Applicant contacted the loan company and attempted to settle the loan. His most recent proposal was a \$4,000 settlement offer in 2013. (Tr. 21) The loan company repeatedly rejected his offers, insisting on receiving the total balance of the loan. In December 2016, Applicant retained an attorney to help him resolve this delinquent debt. (AE C) He intends to use part of a life insurance benefit, totaling \$8,000 that he received from his recently-deceased mother's life insurance policy to facilitate the settlement of the car loan delinquency. (Tr. 24)

SOR subparagraph 1.b is a medical bill, totaling \$100, for a job-related injury. The hospital submitted the bill initially to his employer, who did not pay it. Applicant satisfied this bill in November 2016. (AE A)

SOR subparagraph 1.c, totaling \$300, is an early termination fee that Applicant incurred when he switched cell phone providers before the expiration of his contract. In October 2016, Applicant contacted the cell phone company and settled this bill for \$195. He paid the settlement, as agreed. (AE B)

Applicant has received credit counseling over the years. (Tr. 28) With the help of one of his credit counselors, he developed a budget. Per his budget, he has between \$800 and \$1,200 of monthly discretionary income. (Tr. 30) He earns a salary of \$75,000 per year. Applicant is current on all of his revolving debts.

¹Applicant waived his right to 15 days notice of hearing.

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

Under this guideline, “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.” (AG ¶ 18) Applicant’s delinquent debt 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 debts.

Two of Applicant's three delinquencies, subparagraphs 1.b and 1.c, are nominal bills, collectively less than \$500. He has paid them, and I resolve them in his favor. He incurred the most significant debt, the car loan delinquency, when his sister, with whom he cosigned the loan, defaulted. Although his delinquency was triggered by his sister's default, he contractually obligated himself to pay the loan under these circumstances. Consequently, this delinquency was not caused by circumstances beyond his control. AG ¶ 20(b) does not apply.

Nevertheless, Applicant has been making good-faith efforts to resolve this delinquent car note, most recently, retaining an attorney to negotiate a settlement. He has received credit counseling over the years, and organized a budget. He has monthly discretionary income of between \$800 and \$1,200, and recently received a windfall of \$8,000, as the beneficiary of his late mother's life insurance policy. I conclude that Applicant has been making good-faith efforts to resolve the problem, and that there are clear indications that the problem is under control. AG ¶¶ 20(c) and 20(d) apply.

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.

Applicant's financial problems did not stem from greed or irresponsible spending. Instead, they occurred after his sister, for whom he cosigned a loan, defaulted. Although this does not constitute a circumstance beyond his control, it does somewhat lessen the negative security inferences related to the nature and seriousness of the conduct. Applicant has satisfied two of the SOR delinquencies, and has retained an attorney to negotiate a settlement of the remaining delinquency, an automobile loan. Given Applicant's robust efforts at rehabilitation, and his stable financial situation, I conclude that Applicant has mitigated the security concern.

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

Subparagraph 1.a - 1.c: 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