



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04252

Appearances

For Government: Tovah Minster, Esquire
For Applicant: *Pro se*

03/10/2017

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On December 16, 2015, the Department of Defense (DOD) issued 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; 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 within the DOD on September 1, 2006.

In a response notarized on March 17, 2016, Applicant admitted seven of nine allegations raised under Guideline F and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on June 6, 2016. The matter was scheduled on July 28, 2016, for a September 7, 2016, hearing. On September 23, 2016, it was rescheduled for an October 12, 2016, hearing. The hearing was convened as scheduled.

The Government offered three documents, which were accepted without objection as exhibits (Exs.) 1-3. Applicant offered testimony. The record was held open

through October 18, 2016, in the event the parties wished to submit additional material. The transcript (Tr.) was received on October 17, 2016. On October 18, 2016, I accepted three packs of material from Applicant without objection, marked as Exs. A-C, and the record was closed. After review of the record as a whole, I find that Applicant mitigated financial considerations security concerns.

Findings of Fact

Applicant is a 33-year-old security officer with a defense contractor. He began a second job last year. Applicant has been continuously employed in a full-time or part-time capacity for over a decade.¹ Before starting work in the area of protective service, Applicant was a teacher's aide at a military facility. He has completed two years of college. He has been married for eight years and has four minor children. He was first granted a security clearance in about 2005, which he held without incident. At issue are approximately \$36,000 in delinquent debts regarding which Applicant admits responsibility for all but approximately \$500. He has not received financial counseling.

A little over two years ago, Applicant successfully obtained a mortgage to acquire a home for his family. There is no evidence he has had difficulty meeting his monthly mortgage obligations. Last year, he began his second job to increase his income. Now at issue are the following delinquent debts, as noted in the SOR:

1.a – Child support account – past due - \$2,795. Admitted. This arrearage was created when the amounts for child support automatic payroll deductions were initially withdrawn inaccurately after a child support modification was implemented for his second child. (Tr. 19-20) This occurred in approximately 2008 or 2009 for a period of several months. He has been responsible for payments every two weeks amounting to about \$500 a month. For the past six months or so, he has been paying an additional \$30 each pay period to satisfy the arrearage.

1.b - Child support account – collection - \$8,639. Admitted. This child support is for Applicant's eldest child. He did not know of the child's existence until she was six years old. Child support for this daughter is being paid through automatic payroll deductions about \$275 every two weeks through his workplace. The collection account is being addressed through additional deductions, which Applicant thinks add an additional \$30 to \$50 on his child support payments every two weeks.

With regard to the delinquent child support accounts noted at SOR 1.a and 1.b., Applicant submitted three pay statements reflecting two account disbursements for the three pay periods between August 22, 2016, and October 2, 2016. During each pay period, the pay statements reflect "Child Support Order" deductions were made for \$207.69 and \$296.44, respectively. (Ex. A)

¹ Through 2014, Applicant was with another company doing similar work and considered that employer to be his primary employer. When he voluntarily left that position and focused on his present employer, he incurred a drop in his full-time job salary from \$65,000 to earning nearly \$50,000 in hourly wages. He prefers his present working schedule.

1.c – Student loan – collection - \$4,376. Admitted. Applicant testified that he pays \$60 each month toward this loan. He does not know the current balance, but stated he has been making payments on the account for two years following a period of deferment.² Although they do not reflect actual transactions, Applicant provided four notices from the lender of its intent to originate a debit entry to his bank account for \$60 on February 10, 2016, March 10, 2016, August 10, 2016, and October 10, 2016. (Ex. B)

1.d-1.1g – Student loans – \$6,035, \$3,403, \$5,878, \$3,455. Admitted. These student loans have been consolidated. Applicant showed he has made monthly \$60 payments toward these debts. He stated that this arrangement has been going on for two years, since they left deferment. (Tr. 25) As evidence of payment, Applicant provided evidence that the four accounts were consolidated and that \$60 payments were poised to be made through his bank in February 10, 2016, March 10, 2016, and August 10, 2016. (Ex. C)

1.h – Medical account - \$50. Denied. Applicant denied this allegation, asserting that the balance had been paid. (see SOR Answer; Tr. 28). He stated that he paid this 2012 balance about five years ago. He no longer has any supporting documentation.

1.i – Medical account - \$449. Denied. Applicant denies knowledge of this creditor and account. (Tr. 28) He had and has medical coverage, and he denies ever having had a medical balance owed in this amount. (Tr. 29) Neither before or since receiving the SOR has he disputed its inclusion on his credit report.

Applicant denies having any other outstanding delinquent debts and there is no documentary evidence to the contrary. When considering income from both his current jobs, Applicant has a monthly net income of about \$3,000 to \$3,500 after tax and child support deductions. (Tr. 30) Applicant does not know how much his wife earns as they maintain separate accounts and divide household expenses. Applicant is responsible for the mortgage payments of \$2,143 each month and a \$180 monthly telephone statement balance; Applicant's wife pays for all other household bills.

Applicant has no automobile loan payments for his vehicle. His wife pays for his car insurance. His wife's employer covers family health insurance. Applicant has about \$1,600 in his checking account. (Tr. 33) He has a 401(k) retirement account, but does not know the balance. The proceeds from a prior 401(k) retirement account with a balance of \$5,000 were withdrawn. (Tr. 34) He has under \$1,500 in credit card balances and neither are past due. For over two years, he has held a 30-year fixed rate mortgage

² Applicant noted that this and all of his student loans were deferred multiple times for economic hardship. (Tr. 25) He further noted that they continued to accrue interest while in deferment. He could not specify the dates they were in deferment. He stated that the reason he has no records regarding the deferments is because they were conducted solely by telephone. (Tr. 26) He also explained that his payments have been consistent because they are automatically withdrawn and paid from his paycheck. (Tr. 42-43)

on their house, which is valued at \$299,000 and obtained with no money down. (Tr. 35-36) At the end of each month, Applicant has a net remainder of about \$500 to \$600.

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 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 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, 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 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. Section 7 of Executive Order 10865 provides that 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).

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence indicating that Applicant has multiple delinquent debts, consisting of about \$36,000 in delinquent debt. He admits responsibility for all debts but two medical accounts. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance related security concerns:

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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 has no notable periods of unemployment from full or part-time employment work in the past decade. Indeed, he testified that he currently maintains a part-time position in addition to his full-time security work. This has increased his present income level. He has not, however, received financial counseling. He cited to no specific causes for his acquisition of delinquent debt, although his child support arrearages seem to have been created by causes beyond his control. His actions to facilitate or agree to the addition of extra sums to his preexisting child support disbursements were a reasonable response, as was his acquisition of a second job.

The proof of payments on Applicant's child support accounts and student loans come from random paystubs and notices of intent to debit. None, however, indicate any recent past-due payments or interruptions in deductions or bank account debiting. Given the practicalities and paperwork involved of instituting these automatic payments, it is reasonable to conclude that uninterrupted and regular deductions were made at least from the earliest to latest payments noted. Consequently, Applicant's proffered exhibits demonstrate, at least, that Applicant made payments toward his child support accounts for three pay periods and on his student loans for over six months each.

Given Applicant's credible testimony regarding these repayments, it is not illogical to deduce they have been in place longer than the time periods reflected in his documentation. Implementation of automatic payroll and bank deductions, both of which involve cumbersome paperwork to initiate, should assure that these regular obligations are met, even if Applicant does not monitor their receipts on a consistent basis.

I recognize, however, there is no documentary proof that Applicant paid the nominal \$50 medical debt at issue. Moreover, he provided no documentary evidence reflecting he has formally disputed the \$449 medical debt with the provider or one of the credit reporting bureaus. His testimony was credible, however, and he noted that he had health insurance coverage at the time that should have covered any such bills. Lacking documentary proof of a dispute, however, AG ¶ 20(e) does not apply. Given all these considerations as a whole, however, I find Applicant has provided sufficient evidence to invoke AG ¶ 20(b) through AG ¶ 20(d).

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). 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 incorporated my comments under the two guidelines at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a highly credible 33-year-old protective service officer who has held a security clearance without issue with a defense contractor. He attended two years of college, is married, and is father of four children. Around two years ago, he bought a home and took a second job to increase his income. He first obtained a security clearance in 2005, when he was about 21 years of age.

Apparently, Applicant had no significant financial issues when he applied for a home mortgage. This was after he had been deemed responsible for child support arrearages for his two oldest children. Those arrearages were due to factors beyond his control. Applicant's evidence indicates that that he is presently paying on both the child support and arrearages through payroll deduction. Similarly, he provided documentary evidence that all his student loans are in repayment. Only the two medical account bills remain unaddressed. Applicant stated one had been paid and asserted he disputed the other, which was apparently acquired despite health insurance coverage. Together, they represent under \$500. This is not an insignificant sum. The record evidence, however, reflects that he has his overall delinquent debt problem managed and that he is otherwise living within his means.

This process expects that an applicant employ a reasonable strategy or plan to address one's delinquent debts. It then requires documentary evidence that such a plan has been successfully implemented. Applicant's plan is have his child support and student loans paid directly by his employer and bank. With those burdens assigned, he has been able to move forward with a monthly gross net surplus for saving. While his medical debt should be addressed by Applicant, his documentation, current budget, past maintenance of a security clearance, and credible testimony all tend to mitigate financial considerations security concerns. Under these facts, I find that Applicant mitigated 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
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Subparagraphs 1.a-1.i:	For Applicant
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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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge