



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



In the matter of:)
)
) ISCR Case No. 15-04281
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: William H. Henderson, Personal Representative

08/23/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On February 3, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on March 5, 2016, and elected to have the case decided on the written record in lieu of a hearing.

A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on August 17, 2016. He responded to the FORM with an affidavit and attached documents marked as Applicant's Exhibits (AE) A through Z. The case was assigned to me on July 3, 2017. The Government exhibits included in the FORM, Applicant's response to the FORM, and AE A through Z are admitted in evidence without objection.

Findings of Fact

Applicant is a 57-year-old employee of a defense contractor. He has worked for his current employer since 2005. He served on active duty in the U.S. military from 1979 until he retired in 1999. He seeks to retain his security clearance, which he has held for more than 35 years. He has a bachelor's degree, which was awarded in 2006, and a master's degree, which was awarded in 2014. He is married for the second time. He has four children and an adult stepchild.¹

The SOR alleges six medical debts totaling \$9,788; six defaulted student loans in excess of \$88,000; a loan on a time-share that was \$527 past due with a \$527 balance; and that Applicant defaulted on a mortgage loan, the creditor foreclosed on the property in 2009, and reclaimed the property to satisfy the defaulted mortgage. In his SOR response, Applicant admitted owing all of the debts at one point, but he stated that a number of the debts had been paid and two of the student loans were duplicate accounts. The credit reports submitted by the Government show that a \$61 medical debt (SOR ¶ 1.a) and the \$527 time-share debt (SOR ¶ 1.b) were paid before the FORM was issued.²

One of Applicant's children had protracted emotional and medical problems that resulted in inpatient treatment for almost two months on one occasion and about six months on another occasion in a state more than a thousand miles away. His other children also had unexpected medical issues. Applicant and his family have medical insurance by virtue of his military retirement. However, some bills were not properly submitted to his insurance; there were copayments; and he incurred substantial costs for his family to travel and visit his child. His wife had several periods of unemployment, and when she returned to work it was at a reduced salary. He lost a rental property to foreclosure in 2009 after his tenants moved out, and he was unable to rent the property. There is no evidence of any remaining deficiency owed on the mortgage loan. Applicant or his insurance company paid or otherwise resolved all of the medical debts alleged in the SOR.³

A collection company was assigned four of Applicant's defaulted student loans (SOR ¶¶ 1.j-1.m). The balance in February 2016 was \$78,404. The collection company made a settlement offer on the creditor's behalf to accept \$12,806 as full settlement of the debt. Applicant took a loan from his 401(k) retirement account and paid the settlement amount.⁴

The SOR alleges two additional student loans. Applicant admitted owing the \$16,287 defaulted student loan alleged in SOR ¶ 1.c. This is a consolidated loan that

¹ Item 4; AE W.

² Items 3, 5-7; Applicant's response to FORM; AE A, B.

³ Items 3-8; Applicant's response to FORM; AE A, E-I, N.

⁴ Items 3, 5-7; Applicant's response to FORM; AE A, J, K.

was transferred to another agency. As of May 2016, the loan was in good standing and Applicant was making monthly payments even though the loan was in forbearance.⁵

The \$1,127 past-due student loan alleged in SOR ¶ 1.d was transferred to the government for collection. It is unclear whether it became part of the loans that were consolidated and now being paid or part of the loans that were settled and paid. In either event, it is a duplicate account.⁶

Applicant worked in Afghanistan for a year as a means of earning extra money to pay his debts. His finances are currently in order. He stated that he is “resolved to pay closer attention to [his] personal finances and never allow a situation like this to occur in the future.”⁷

Applicant submitted letters and documents attesting to his excellent job performance, honesty, leadership, loyalty, trustworthiness, judgment, professionalism, dependability, reliability, dedication, and integrity.⁸

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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.

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(a), 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.

⁵ Items 3, 5-7; Applicant’s response to FORM; AE A, C, D.

⁶ Items 3, 5-7; Applicant’s response to FORM; AE A.

⁷ Items 3-7; Applicant’s response to FORM; AE O-R.

⁸ AE S-V, X, Y.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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 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 the above disqualifying conditions.

Conditions that could mitigate the 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to 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 finances were adversely affected by his children's medical problems, his wife's unemployment, and the loss of his tenants at his rental property. He worked in Afghanistan for a year as a means of earning extra money to pay his debts. All of the delinquent debts alleged in the SOR have been paid, settled, in good standing and being paid, or otherwise resolved. His finances are currently in order, and financial concerns have been mitigated.

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(d):

(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.

I considered Applicant's honorable military service, his work history, and his favorable character evidence. He resolved every debt alleged in the SOR, and his current finances are sound.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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.n:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge