



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



In the matter of:)
)
) ISCR Case No. 15-04401
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

03/27/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On March 23, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline 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 April 13, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on May 11, 2016. 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 May 17, 2016. Applicant responded with documents that I have marked collectively as Applicant's Exhibit (AE) 1. The case was assigned to me on March 10, 2017. The Government exhibits included in the FORM and AE 1 are admitted in evidence without objection.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He obtained his GED in 2002 and attended college from 2004 to 2006 but did not earn a degree. He has worked for his current employer since June 2007, with multiple periods in which he worked overseas or occasions when he worked stateside but away from home. He served on active duty in the U.S. military from 1997 until he retired with an honorable discharge in 2007. He was granted DOD security clearances in 1997 and 2011. He married in 1997, divorced in 2002, married again in 2003, and divorced in 2009. He has one adult and two minor children.¹

Applicant divorced his second wife because of her failure to pay their bills and frivolous spending when he worked overseas. He resolved most of the resulting financial problems.²

The SOR alleges a \$10,161 judgment and 10 delinquent debts totaling \$28,151, comprised of six student loan debts totaling \$20,019, two consumer accounts totaling \$7,702, and two minor medical debts. Applicant admitted to SOR debts ¶¶ 1.b to 1.i, and denied SOR debts ¶¶ 1.a, 1.j, and 1.k. The debts are established by Applicant's admissions and credit reports.³

With the exception of the judgment alleged in SOR ¶ 1.a, the most recent credit report from May 2016 does not report any delinquent debts. The debt alleged in SOR ¶ 1.j is for the same debt underlying the judgment alleged in SOR ¶ 1.a.⁴ Credit reports from June 2014 and February 2015 report SOR debt ¶ 1.j as \$1,813 past due with a \$10,161 balance. Credit reports from November 2015 and May 2016 no longer report SOR debt ¶ 1.j. All four credit reports reflect that the \$10,161 balance of SOR debt ¶ 1.j was entered as a judgment against Applicant as alleged in SOR debt ¶ 1.a. The settlement letter Applicant received in May 2016 references the same creditor as SOR debt ¶ 1.j, and the same date of judgment as SOR ¶ 1.a. Applicant provided a copy of his Experian credit report from June 2014 to show that the judgment alleged in SOR ¶ 1.a was deleted as a result of his dispute. To continue to resolve this judgment, Applicant provided pay stubs to show that his wages were garnished from December 2015 to April 2016 for around \$4,368. After he received the settlement letter of \$3,500

¹ Items 2-4.

² Items 2-7; AE 1.

³ Items 1-7; AE 1.

⁴ While the creditors alleged are different, I am satisfied after reviewing all the evidence that they pertain to the same debt. Items 1-7; AE 1.

for the remaining \$5,887 balance, Applicant paid \$2,000 in May 2016 and planned to pay \$130 monthly in accordance with the settlement.⁵

Applicant also provided pay stubs to show that his wages were garnished from February 2010 to July 2013 for around \$26,000 to resolve his student loan debts. The May 2016 credit report reflects that Applicant paid the two medical debts, as they carry a zero balance. Applicant maintained that he has no knowledge of SOR debt ¶ 1.k.⁶

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.

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.

⁵ Items 5-7; AE 1.

⁶ Items 2-4; AE 1.

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 was unable or unwilling to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(b) as 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, 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.

Most of Applicant's financial problems were caused by his second wife's financial irresponsibility when Applicant worked overseas. Applicant incurred a few minor debts after his divorce during the occasions when he worked stateside but away from home. He began resolving his delinquent debts before he received the SOR. He has paid most of his debts and not incurred additional delinquent debts. I am satisfied that Applicant's finances are in order. AG ¶¶ 20(a) to 20(d) are applicable.

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 Guideline F in this whole-person analysis.

I considered Applicant's honorable military service. I also considered the cause of Applicant's financial problems and that he resolved his debts.

Overall, the record evidence leaves me without questions or doubts as to 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.k:

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.

Candace Le'i Garcia
Administrative Judge