



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



In the matter of:)
)
) ISCR Case No. 15-04588
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

04/10/2017

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 24, 2015, 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 18, 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 19, 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 25, 2016. Applicant's response from June 2016 is marked 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 59-year-old employee of a defense contractor. He obtained two associate's degrees in 1991 and 1994, a bachelor's degree in 1993, and a master's degree in 1997. He has worked for his current employer since June 2014. He served in the U.S. military on active duty from 1978 until 1989, and in the Reserve or Air National Guard from 1992 to 2007. He was honorably discharged after each period of service. He worked briefly as a federal civilian from September 1989 to January 1990. He was granted DOD security clearances in 1979 and 1997. He married in 1989, and divorced in 2005. He has four adult children.¹

Applicant attributes his financial problems to his divorce in 2005, his consequent court-ordered obligations of \$1,450 monthly in alimony until 2019 and \$633 monthly in child support that only recently ended in January 2016 when his youngest child turned 18 years old, a job layoff in 2009, a brief period of unemployment that followed, a subsequent in-state job relocation in which he took a \$43,000 pay cut, the downturn in the real-estate market in the same year, an out-of-state job relocation in 2010, and a second job layoff in 2012. His primary residence was foreclosed during this period after his mortgage company declined to lower his payments. His two rental properties were also foreclosed after he was unable to find tenants and the mortgage companies would not work with him since the properties were rentals. Applicant provided documentation to show that the largest of his financial debts alleged in the SOR, pertaining to one of his rental properties, was canceled, and he paid a minor medical debt. He is in the process of resolving his remaining debts.²

The SOR alleges five delinquent debts totaling \$157,906, comprised of a mortgage account in foreclosure status with a balance of \$138,494, a home equity line of credit charged off for \$14,151, a consumer line of credit charged off for \$4,684, and two minor debts for a medical account and an apartment cleaning fee. Applicant admitted to all of the SOR debts. The debts are established by Applicant's admissions and credit reports.³

The most recent credit report is from November 2015. It reports SOR debts ¶¶ 1.a, 1.d, and 1.e. The credit report from August 2014 reports SOR debts ¶¶ 1.b to 1.e. Applicant provided a screenshot of a credit card statement to show that he paid SOR debt ¶ 1.a in April 2016. He provided an IRS Form 1099-C to show that the creditor

¹ Items 2-3.

² Items 1-5; AE 1.

³ Items 1-5; AE 1.

canceled SOR debt ¶ 1.d in September 2015. He stated that after multiple attempts since April 2016 to locate SOR debt ¶ 1.c, he began payments of \$250 monthly in June 2016 towards it. He initially disputed SOR debt ¶ 1.b. He tried unsuccessfully to locate the creditor after he received the SOR, and intends to continue to try to do so. He stated that he thought his line of credit in SOR debt ¶ 1.e was closed. He submitted documentation to show that in April 2016 he inquired into the debt. He indicated that the creditor's response was that they do not have a record of it. He provided a copy of his online banking statement to show that he carries a zero balance for a line of credit with the same last four account numbers as that listed on the August 2014 credit report for SOR debt ¶ 1.e. He intends to continue to investigate this debt.⁴

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

⁴ Items 1-5; AE 1.

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 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;

(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.

Circumstances beyond Applicant's control contributed to his financial problems. His largest debt was canceled and he paid the minor medical debt. He is paying his second largest debt. He is resolving his remaining debts. There is no evidence that he has incurred additional delinquent debts. I am satisfied that Applicant's current finances are in order. AG ¶¶ 20(a) to 20(e) 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 has taken action to resolve 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.e: 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