



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



In the matter of:)
)
) ISCR Case No: 15-04808
)
)
Applicant for Security Clearance)

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

09/20/2016

Decision

DAM, Shari, Administrative Judge:

Applicant experienced financial difficulties between 2009 and 2014. He mitigated the security concerns raised under the guideline for financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On September 16, 2014, Applicant submitted an electronic Questionnaire for Investigations Processing Investigation Request (e-QIP). On February 29, 2016, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* effective within the DOD on September 1, 2006.

Applicant answered the SOR in writing (Answer) on March 10, 2016, and requested a hearing before an administrative judge. On June 2, 2016, DOHA assigned the case to me. On June 13, 2016, DOHA issued a Notice of Hearing setting the case for July 12, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through K into evidence without objection. He called one witness. DOHA received the hearing transcript (Tr.) on July 22, 2016. The record closed at the conclusion of the hearing.

Findings of Fact

Applicant admitted all the SOR allegations, except those in ¶¶ 1.c, 1.e, and 1.i through 1.m. He attached exhibits to his Answer. All admissions are incorporated herein.

Applicant is 36 years old and divorced. He has a three-year-old child from a former relationship. He is a high school graduate and has a commercial driver's license. He began working for his employer in September 2014. He said he has excellent performance evaluations. His employer is aware of the financial security concerns underlying this security clearance investigation. (Tr. 15-19.)

In August 2005 Applicant filed a Chapter 7 bankruptcy. Later that year, the court discharged about \$20,000 of delinquent debts, which included many of his wife's medical debts. They did not have medical insurance at the time. Subsequently, Applicant accumulated additional delinquent debts as a result of marital issues with his wife, who was not paying their bills. (Tr. 19-20, 25-26.) Prior to obtaining his current job, he was not paid \$8,000 or \$9,000 for a job that he anticipated earning. That loss of income contributed to some of his financial problems. (Tr. 24.)

Based on credit bureau reports (CBR) from October 2014, May 2015, and July 2016, the SOR alleged the 2005 bankruptcy and 13 delinquent debts, totaling \$43,037. (GE 2, GE 3, and GE 4.) The debts arose between 2009 and 2014. A summary of the status of each debt is as follows:

SOR ¶ 1.a: The Chapter 7 bankruptcy filed in 2005 was discharged that year.

SOR ¶ 1.b: The \$7,392 child support debt is resolved and current. Unbeknownst to Applicant, his former girlfriend gave birth to a child in 2013. She subsequently filed a paternity suit and prevailed. He was required to make up almost two years of arrearages. (Tr. 26-30; AE C.)

SOR ¶ 1.c: The \$3,746 debt owed to a bank for an automobile repossession was resolved in June 2015. He thought his former wife was paying the debt. (Tr. 30-31; AE D.)

SOR ¶ 1.d: The \$275 debt owed to the collection agency for a cell phone company is the same debt alleged in ¶ 1.f for \$199. It was paid in March 2016. (Tr. 31-32; AE E.)

SOR ¶ 1.e: The \$234 gas bill is paid. (Tr. 32; GE 4.)

SOR ¶ 1.g: The \$173 cable bill was paid in March 2016. (Tr. 33; GE 4; AE F.)

SOR ¶ 1.h: The \$133 cell phone bill was paid in March 2016. (Tr. 33; GE 4; AE G.)

SOR ¶ 1.i: The \$520 cell phone debt is resolved. Applicant spoke to the carrier and told them he never had a phone with the company. He disputed it, and it was later removed from his credit report. (Tr. 34; GE 4.) It is resolved.

SOR ¶ 1.j: The \$340 debt owed to an insurance company is resolved. Applicant has a current account with the company that is in good standing. (Tr. 34; GE 4; AE H.)

SOR ¶ 1.k: The \$178 medical debt was his former wife's debt. He paid it in May 2016. (Tr. 34; GE 4; AE I.)

SOR ¶ 1.l: The \$90 medical debt was his former wife's debt. Applicant's above payment covered this debt too. It is paid. (Tr. 35-36; GE 4; AE I.)

SOR ¶ 1.m: The \$79 insurance debt was paid in March 2016. (Tr. 36; GE 4; AE J.)

SOR ¶ 1.n: The \$2,596 past-due amount owed on an automobile loan with a balance of \$29,678 is resolved and the account is current. (Tr. 36-38; GE 4; Answer: Ex. N.)

Applicant's annual salary is between \$110,000 and \$120,000, depending on his work schedule. (Tr. 22.) His net monthly income is \$8,800 a month and his regular living expenses are about \$3,500, leaving him sufficient money for other expenses. (AE K.) He said that when he became a lease operator of a truck in 2014, his income increased dramatically. (Tr. 39.) He has not participated in financial counseling, but he has reviewed his credit report thoroughly and resolved all delinquent debts appearing on it. He does not intend to "get behind again." (Tr. 41.)

Applicant's friend testified. He and Applicant work for the same company, and he trained Applicant. He has a security clearance. He helped Applicant address his financial issues. He said Applicant has "always wanted to pay his debts. He does not use credit cards." (Tr. 44.) He has a high opinion of Applicant. (Tr. 44.) The vice-president where Applicant is employed stated that Applicant has "performed his job

without incident.” (AE B.) He said that Applicant is a safe driver, and he is pleased to have him as an employee. (AE B.)
(I added a line space here)

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 (AG) list potentially disqualifying and mitigating conditions, which are useful 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 AG ¶ 2(a) describing 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

As documented by CBRs and his admissions, Applicant obtained a Chapter 7 discharge of his debts in 2005. He experienced additional financial problems between 2009 and 2014 that he had been unable or unwilling to manage until 2014 when he started his current position. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those two disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets forth conditions that could potentially mitigate financial security concerns:

- (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.

Applicant demonstrated that his indebtedness is unlikely to recur given his current position, income and budget. He established mitigation under AG ¶ 20(a). Applicant attributed his financial problems to the loss of money he was owed for a job and marital issues with his former wife. Those were circumstances beyond his control. There is insufficient evidence to conclude that he responsibly managed his debts or obligations while they were accumulating between 2009 and 2014. Hence, AG ¶ 20(b) has partial application.

Applicant provided evidence to support the application of AG ¶ 20(c). Although he has not participated in credit or financial counseling, there are clear indications that his financial issues are under control, and all matters alleged in the SOR are resolved. He paid or resolved his delinquent debts, including unpaid medical bills for his former wife, and he has more than sufficient income to remain solvent and current on his financial obligations in the future. His actions in addressing the financial obligations exhibited a good-faith effort to resolve debts and established mitigation under AG ¶ 20(d). Applicant stated that he disputed a cell phone debt with the carrier listed in the SOR. Subsequently, the company removed the debt from his credit. There is sufficient evidence to establish mitigation under AG ¶ 20(e).

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). They include the following:

(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) 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 include 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 facts and circumstances surrounding this case. Applicant is a credible 36-year-old man, who has successfully worked for a defense contractor since 2014. After obtaining this position he has earned sufficient money to resolve all outstanding delinquent debts. In addition, he has received financial assistance for managing his finances and credit issues from a work colleague, who is aware of this investigation. Applicant now regularly reviews his credit report and intends to remain debt free. He understands that further delinquencies could jeopardize his employment. His financial situation is sufficiently stable that it no longer poses a security concern. The evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 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 grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge