



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



In the matter of:)
)
) ISCR Case No. 15-05233
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: Brian Bodansky, Esq.

02/16/2017

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concern. Clearance is granted.

Statement of the Case

On February 21, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant 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) implemented by the Department of Defense on September 1, 2006.

On March 29, 2016, Applicant answered the SOR, admitting all of the allegations except subparagraphs 1.b and 1.d. He requested a hearing before an administrative judge from the Department of Defense Office of Hearings and Appeals (DOHA), and the

case was assigned to me on August 11, 2016. The hearing was initially scheduled for October 19, 2016, but was continued to December 5, 2016 after an illness rendered Applicant too sick to attend the October hearing. The hearing was held as rescheduled. At the hearing, I received three Government's exhibits (GE 1 - GE 3), and four Applicant's exhibits (AE A - AE D). DOHA received the transcript (Tr.) on December 13, 2016.

Findings of Fact

Applicant is a 33-year-old married man. He has a high school diploma and has earned some college credits. Since the summer of 2016, he has worked for a defense contractor as a systems engineer. (Tr. 10) He worked for his previous employer between 2010 and 2016.

Since 2005, Applicant has incurred five delinquent debts totalling approximately \$27,500. He incurred the debt alleged in subparagraph 1.a, totaling \$2,035, after he was in a major car accident that totalled his recently purchased car. (Tr. 26) Although he had purchased gap insurance, it did not cover the entire balance of the car loan. In February 2016, Applicant contacted the creditor and began making monthly payments. (Answer, Attachment B) By June 2016, Applicant had satisfied the debt. (AE A)

The debt alleged in subparagraph 1.b, a judgment totaling \$981, relates to a delinquent credit card that Applicant incurred when he in his late teens. Applicant satisfied this debt in September 2016, with an automatic debit of \$1,253, the amount that it had accrued since March 2015. (GE 3 at 5)

The debt alleged in subparagraph 1.c is a delinquent car loan, totaling \$15,233. Applicant incurred this debt in 2008, when he lost his job several months after purchasing the car. (Tr. 17-18) In September 2016, Applicant negotiated a settlement for \$6,426. Under the terms of the settlement, Applicant was to make a \$2,500 payment, followed by monthly payments of \$163. (AE D) Applicant made the \$2,500 payment, as agreed. (AE D)

Subparagraph 1.d totals \$9,073. Applicant denies this debt, contending that he contacted the creditor, who told him they had no record of it. (Tr. 20) GE 3 indicates that the contested debt was opened in February 2007, delinquent by 2009, and charged off in March 2015. (GE 3 at 4)

The debt alleged in subparagraph 1.e is a delinquent cell phone bill totaling \$311. Applicant paid this bill in March 2016. (AE C)

Applicant earns \$110,000 per year. He has between \$10,000 and \$12,000 invested in a 401k account, and he deposits approximately \$300 per month into a savings account. (Tr. 21, 38)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Applicant’s delinquent debt triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 incurred the \$15,233 debt, alleged in subparagraph 1.c, after losing his job in 2008, and he incurred the \$2,035 debt, alleged in subparagraph 1.a, in 2014 after totaling his car and discovering that the gap insurance was insufficient to cover the remaining amount of the car loan. The first debt clearly relates to circumstances beyond his control. Although Applicant had a responsibility to carefully read the gap insurance plan, the unexpected misfortune of being involved in a car accident so close to financing the purchase of his automobile is enough for me to conclude that the first prong of AG ¶ 20(b) applies.

Of the SOR debts that Applicant admits, he has satisfied all but one of them in their entirety, and he has made significant progress towards satisfying the lone outstanding one through monthly payments. The remaining prong of AG ¶ 20(b) applies, together with AG ¶¶ 20(c) and 20(d).

Applicant testified that he contacted the creditor of the debt alleged in SOR subparagraph 1.d, and that the creditor told him it had no outstanding debt on file. However, he provided no documented proof supporting his testimony. AG ¶ 20(e) does not apply.

Applicant has no children, makes a six-figure salary, is investing in his retirement plan, and saving \$300 monthly. I conclude that the positive inference that these facts generate outweighs the negative inference generated by the unresolved nature of SOR subparagraph 1.d.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Of the four debts that Applicant admits to having incurred, one is nominal, and two were incurred seven or more years ago. The most recent debt, incurred in 2014, related to misfortune rather than irresponsible spending. Given the progress Applicant

has made in eliminating his debts, and his current financial stability, I conclude he has mitigated the financial considerations security concern.

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.e:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge