



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-05451

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is granted.

Statement of the Case

On March 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 (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 effective within the DOD for SORs issued after September 1, 2006.

Applicant timely answered the SOR and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM) on June 16, 2016. Applicant received the FORM on June 22, 2016, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence. He provided a one-page

response to the FORM dated July 10, 2016, plus attachments.¹ These have collectively been marked as Applicant's Exhibit (AE) A and are admitted without objection. The Government's evidence, identified as items 1 through 6, is admitted into evidence without objection. The case was assigned to me on May 1, 2017.

Findings of Fact²

Applicant is 62 years old. He obtained his GED in 1973. His first marriage was from 1977 to 1980, when he was divorced. He has been married to his present wife since 1986. Applicant has been employed by a federal contractor since October 2001. Applicant reports having a security clearance since 2004. Applicant disclosed in section 26 of his Questionnaire for National Security Positions (SF 86) or security clearance application (SCA) that "after a severe injury and later diagnosed with MS I was out of work, off and on, for approximately 3 years causing some financial difficulties."³ He also stated that he had an attorney working on his mortgage delinquency issue, and he described an automobile loan delinquency, in the amount of \$15,150, with a bank at SOR ¶ 1.e. Applicant explained: "During my illness I fell behind on my payments and the loan 'disappeared' from all records when I paid off another car at the same bank. Just recently the loan reappeared and was charged off. The car remains in my possession and no attempt was made by the bank to recover the car."⁴

In his subject interview on January 2, 2015, Applicant clarified that the auto loan in question fell off his credit report when he went on disability in 2009 and couldn't make payments.⁵ Around that same time, he paid off his spouse's similar auto loan with the same bank. Subsequently, an apparent computer error incorrectly reflected both auto loans as paid.⁶ Applicant did not receive any bank correspondence, or repossession notices. Applicant does not dispute it. He was previously using consumer credit-counseling services, then he hired attorneys in 2009 to attempt resolution of his delinquent debts.⁷ SOR ¶ 1.e is not resolved. Page one of his July 2016 credit report reflects that the delinquent debt alleged at SOR ¶ 1.c has been deleted and removed,

¹ AE A attachments include: a one page bank account activity statement showing a \$79.64 debit apparently paid to N.R. Agency on April 29, 2016; a one page June 30, 2016 letter from JCS stating although a balance of \$5,300.75 is still due Citibank on a credit card, they terminated collection efforts; a ten page July 19, 2016 Experian Credit report; and two ten page Karma credit reports, both dated July 20, 2016.

² Unless stated otherwise, the source of the information in this section is Applicant's September 25, 2014, Questionnaire for National Security Positions (SF 86) or Security Clearance Application (SCA). (Item 2).

³ Item 2, page 33.

⁴ Item 2, page 35.

⁵ Item 5, page 6.

⁶ Item 5, page 6.

⁷ Item 5, page 6.

after Applicant successfully disputed it.⁸ This debt is resolved. Similarly, Applicant disputed the debt at SOR ¶ 1.b as fraudulent. It has been removed from his credit reports, and it is resolved.⁹

Applicant admitted four of the five delinquent debts alleged in the SOR, totaling approximately \$65,448. In his Answer to the SOR, Applicant denied SOR ¶ 1.a, as it has been paid off. This is confirmed by the page from his bank statement dated April 29, 2016, attached to AE A. In regards to the home mortgage loan delinquency at SOR ¶ 1.d, Applicant annotated his Answer stating “I agree, the house to be sold May 26, 2016.”¹⁰ Through counsel, he attempted to negotiate the mortgage loan debt with the bank, but the bank was intractable and Applicant was advised to vacate his home of 25 years and allow foreclosure sale to ensue.¹¹ The house has since been transferred back to the mortgagee bank, and his credit reports all reflect no balance due. This debt is resolved.

In his April 11, 2016 letter “to whom it may concern” attached to his Answer to the SOR, Applicant described a series of medical misfortunes that he and his wife endured. Approximately 20 years ago, he contracted Lyme disease with complications. This condition went undiagnosed for eight years. More recently he has been diagnosed with relapsing, reoccurring multiple sclerosis (MS). Then, in October 2010, Applicant fell from a tree, causing multiple fractures. Since then, he has been on temporary disability, on and off, for several years.¹² His wife suffered a heart attack in January 2013, resulting in exorbitant medical expenses. She is 66 years old, and incapable of working. Applicant returned to work in May 2012, but the damage to his credit was substantial, as he was the sole-bread winner for his family. Despite receiving legal advice to declare bankruptcy, Applicant declined to do so, and he is making progress paying debts, with the help of legal counsel. His financial delinquencies are not due to gambling, alcohol, or drug abuse.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

⁸ AE A, attached Experian Credit Report.

⁹ AE A, attached Experian Credit Report.

¹⁰ Item 1.

¹¹ Item 1, attached letter at p. 2.

¹² Item 1, attached letter at p. 1.

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 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.

Under 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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.

Section 7 of EO 10865 provides that 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 relating to the guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

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

Applicant admitted to virtually all of the delinquent debts alleged in the SOR, except for the debt alleged at SOR ¶ 1.a. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.¹³ Applicant met that burden. Only one delinquent debt is unaddressed.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 problems were largely beyond the person's control, 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;

¹³ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

(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 and his wife have endured multiple illnesses, disability, and unforeseen expenses related to the downturn in the real estate market. These conditions were beyond his control. Applicant has demonstrated that he acted responsibly under the circumstances. Applicant indicated he employed the services of a credit-counseling agency, then a law firm, to try to compromise and settle some of his delinquent debts. Applicant produced documents to show that he paid off SOR ¶ 1.a, successfully disputed the debts at SOR ¶¶ 1.b and 1.c, and satisfied the mortgage loan by transferring his home back to the bank at SOR ¶ 1.d. He is making progress in resolving his only remaining delinquent debt at SOR ¶ 1.e. His debts are substantially resolved. Applicant provided sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances unlikely to recur. The mitigating conditions enumerated above apply.

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 the 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 my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline.

Applicant's finances no longer remain a security concern. There are ample indications that Applicant's financial problem are under control. He has met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising under Guideline F, financial considerations.

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

Robert J. Kilmartin
Administrative Judge