



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



In the matter of:

)
)
)
)
)
)
)

ISCR Case No: 15-05811

Applicant for Security Clearance

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

03/27/2017

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 March 23, 2015, Applicant submitted a security clearance application (SF 86.) On March 25, 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 on April 13, 2016 (Answer), and requested a hearing before an administrative judge. On October 18, 2016, DOHA assigned the case to me. On October 19, 2016, DOHA issued a Notice of Hearing setting the case for November 16, 2016. The case proceeded as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and offered Applicant Exhibits (AE) 1 through 10 into evidence. All exhibits were admitted. The record closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on November 28, 2016.

Findings of Fact

Applicant admitted all four SOR allegations. His admissions are incorporated herein.

Applicant is 42 years old and married for 11 years. He has a stepson with special needs. He earned a bachelor's and master's degree in accounting. After finishing his master's degree in 2001, he started a position with a national accounting firm. He subsequently took a position with a non-profit organization where he remained until 2005, when he began a position with a federal agency. He remained there until 2013, at which time he returned to his home state and began working for a state university. He worked there a year and started working at a bank while teaching part-time. Since 2015, he has been working for a federal contractor and teaching. Applicant's wife works for a federal agency. (Tr. 18-21.)

Applicant attributed his financial problems to an investment property he owned and his mother-in-law's illness. In 2005, he purchased a four-flat apartment building in another state that he intended to rent. At some point, the four tenants stopped timely paying their rent. He began using his salary to pay the mortgage on the apartment building and his credit cards for other expenses, including a mortgage on a personal residence he owned at the time. In 2009, he placed the apartment building on the market. In mid-2010, his mother-in-law became seriously ill. His wife used their credit cards to travel to and from her mother's residence and to help her mother financially. In December 2010, Applicant sold the apartment building. His mother-in-law died in September 2011. (Tr. 25-30.)

After his mother-in-law died, Applicant started resolving her estate and debts. In doing so, he became aware of the importance of organizing and managing one's finances, and he started assessing his financial situation. He established a budget, started calling creditors, and negotiated payment plans when able. In 2011, he told his wife that if he consistently worked his financial plan, he would be financially stable within five or six years. He has followed that budget since 2011. (Tr. 28, 32, 34.)

In November 2013, Applicant started working with a debt consolidation company to resolve three SOR-listed debts, and began making monthly payments of \$998 to the consolidation company. He subsequently resolved one debt through payments to the debt consolidation company. (AE 6.) After consistently making payments to the

consolidation company for two years, he became eligible to work with a subsidiary of the consolidation company, which acts as a loan company. The subsidiary company agreed to pay off Applicant's two remaining creditors, and established a loan repayment schedule to the subsidiary for Applicant. The subsidiary company paid about \$23,000 to two creditors to resolve Applicant's formerly delinquent debts in full. Applicant is now making monthly payments of \$715 to the subsidiary company for the loans in SOR ¶ 1.a and SOR ¶ 1.d, as noted below. (Tr. 42-47.)

Based on Applicant's admissions and credit bureau reports (CBR) from April 2015 and May 2016, the SOR alleged four delinquent debts, totaling about \$78,000. (GE 2, GE 3.) The debts arose between 2009 and 2014. A summary of the status of each debt is as follows:

SOR ¶ 1.a: The \$38,763 debt is a charged-off credit card account that Applicant used to pay expenses when his tenants did not pay rent on time, and his wife used for visits to her mother. He was making monthly payments of \$125 on the account between 2011 and 2013, and then stopped because he was only paying interest. The debt ballooned up to \$48,000 and the creditor obtained a judgment against Applicant. The judgment was settled for \$27,000, and Applicant began making monthly payments of \$800 in June 2015. In September 2016, the debt consolidation subsidiary loan company made a final payment of \$15,000 to the creditor, and the judgment was satisfied. Applicant is repaying the subsidiary company for its loan. It is being resolved. (Tr. 38-42; AE 1.)

SOR ¶ 1.b: The \$15,007 debt was owed to a credit card company. Applicant settled this debt for \$11,000. He made monthly payments on the debt from November 2013 until April 2015, at which time it was paid in full. He does not owe any money on this debt. It is resolved. (Tr. 50; AE 3.)

SOR ¶ 1.c: The \$16,124 debt was owed to a company for a home equity loan. Applicant started making monthly payments of \$100 in December 2011. He made his last payment to the creditor in January 2016. It is resolved. (Tr. 51-54; AE 4.)

SOR ¶ 1.d: The \$8,109 debt was owed to a credit card company. The subsidiary company settled the debt for \$3,484 and paid it for Applicant in October 2016. Applicant is repaying the subsidiary company for its loan. It is being resolved. (Tr. 56; AE 5.)

All creditors for the above debts have been paid. Applicant owes the subsidiary company about \$23,000 for having resolved the debts alleged in SOR ¶¶ 1.a and 1.d, and he makes monthly payments of \$715 to repay the loan. He said it would be paid off in May 2019. He has essentially resolved \$55,000 of the \$78,000 alleged in the SOR, and has an established and workable plan to resolve the remaining amount. (Tr. 60.)

Applicant's net income is \$5,777 per month. After paying certain expenses, he has \$1,384 remaining. Applicant's wife has a separate budget. Her net monthly income is \$1,950. After she pays certain expenses, she has about \$150 remaining. Applicant has about \$19,000 in savings, and \$70,000 in his 401(k). He has no loans, other than the one owed to the subsidiary company. (Tr. 35-38; AE 7, AE 8.) He has one credit card on which he makes monthly payments. (Tr. 56.) Applicant explained that he developed a system for managing and paying bills that he consistently follows. As a result, he was able to start his savings account. He is confident about his financial management practices and is secure knowing that his finances are stable and organized. (Tr. 57-59.)

Two years ago, Applicant contacted the Internal Revenue Service (IRS) to establish a payment plan for outstanding taxes. Currently, the balance is \$5,000. He has made monthly payments of \$150 to the IRS for the past two years. The payment is automatically deducted from his salary. He has also had his tax refunds applied to the debt. He thinks this matter will be resolved after he files his 2016 taxes and has the refund applied to the balance. He did not know the tax years involved. (Tr. 32-34.)

Applicant submitted a letter from his project supervisor. The supervisor has worked with him since April 2015 and said that Applicant "has been a solid and trustworthy employee during his time with my team." (AE 9.) A friend and former colleague wrote that he has known Applicant for more than ten years. He said, Applicant "has always been a man of his word." (AE 9.)

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's financial problems arose between 2009 and 2014. He was unable or unwilling to manage those issues until sometime in 2011 when he began to slowly address them. 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 out four 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant demonstrated that his indebtedness is unlikely to recur given his current income, and adherence to a detailed budget. He established mitigation under AG ¶ 20(a). Applicant attributed his financial issues to problems with tenants and his mother-in-law's long illness. Those were circumstances beyond his control. He presented evidence that in late 2011 he began to organize his finances and address his obligations. In late 2013, he hired a debt consolidation company to assist in the resolution of his four large debts. There is sufficient evidence to establish mitigation under AG ¶ 20(b).

Applicant provided evidence to support the application of AG ¶ 20(c). Although he has not participated in credit or financial counseling, he has a detailed budget and worked with a debt consolidation company for three years. There are clear indications that his financial issues are under control, and all matters alleged in the SOR are resolved. He repaid two SOR-alleged debts. He is resolving the other two delinquent debts. His actions in addressing those financial obligations demonstrated a good-faith effort to resolve debts and established mitigation under AG ¶ 20(d).

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 42-year-old man, who has successfully worked for a defense contractor for the past two years. After his mother-in-law's death in late 2011, Applicant started seriously evaluating his financial situation. He subsequently organized a budget, contacted creditors, and began payment plans where appropriate.

In late 2013, Applicant hired a debt consolidation company to resolve three larger debts. One of those debts was paid and resolved through the debt consolidation company. He is resolving the other two debts through payments to the subsidiary company. He repaid the fourth formerly delinquent debt through his own efforts. He owes approximately \$23,000 to the subsidiary company and \$5,000 to the IRS for unpaid Federal taxes. He has been making monthly payments on both debts for several years.

Given the serious and determined attitude, Applicant has about responsibly managing his finances, as exhibited by his organized and detailed presentation, I have no reason to believe he will renege on his financial or legal obligations. He understands that further delinquencies could jeopardize his employment. His financial situation is stable and no longer poses a security concern. 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.d:	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