



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



In the matter of:)
)
) ISCR Case No. 15-06197
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

01/10/2017

Decision

CURRY, Marc E., Administrative Judge:

Considering the circumstances surrounding the incurrence of Applicant's debt and the steps that he has taken to resolve them, I conclude that he has mitigated the security concern. Clearance is granted.

Statement of the Case

On December 21, 2015, 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 DOD on September 1, 2006.

On January 19, 2016, Applicant answered the SOR, admitting all of the allegations and requesting a hearing. The case was assigned to me on August 11,

2016. DOHA issued a notice of hearing on September 2, 2016, scheduling the hearing for October 19, 2016. The hearing was held as scheduled. Department Counsel submitted three exhibits that I identified and received as Government Exhibits (GE) 1 through GE 3. I identified and received six exhibits that Applicant submitted. (AE A - AE F) At Applicant's request, I left the record open at the close of the hearing to allow him to submit additional exhibits. Within the time allotted, Applicant submitted eight exhibits that I incorporated into the record as AE G through AE N. DOHA received the transcript (Tr.) on October 27, 2016.

Findings of Fact

Applicant is a 41-year-old single man. He earned a bachelor's degree in the field of information technology in 2010, and he is an Air Force veteran, serving from 1993 through his honorable retirement in 2012. (AE G) While in the Air Force, he earned six Air Force Achievement Medals, and was awarded non-commissioned officer of the quarter multiple times during his career. (Tr. 18) Since 2013, he has worked for a defense contractor as a software developer. Currently, he is a team leader who supervises seven subordinates. (Tr. 17) He has held a security clearance since 1997. (Tr. 55)

Applicant is highly respected on the job. According to the section chief of the client agency where Applicant is assigned, he is an outstanding individual who immediately made an impact on the agency "through his constructive guidance and feedback." (AE N) Through Applicant's assistance, he helped implement a program that had been stalled for a year before he arrived.

The SOR alleges seven allegedly delinquent debts totalling approximately \$105,000. SOR subparagraphs 1.a and 1.e are the most significant alleged delinquencies. SOR subparagraph 1.a, totalling \$31,828, is an alleged dependent care benefit overpayment. Specifically, in 2005, when Applicant was in the Air Force, his father suffered an aneurysm that completely disabled him. (Tr. 20, 33) Applicant assumed responsibility for his care, and in 2007, he successfully applied for a dependent care allowance to help him support his father. (AE H at 3) The government approved Applicant's application, and cautioned him that he must re-apply for these benefits each year to continue receiving them. The agency that administers the benefit informed Applicant that he never re-applied for the dependent care benefits after the first year that he was approved, and that the alleged delinquency constitutes an overpayment.

Applicant formally disputed this debt in October 2016, filing a waiver/remission of indebtedness, contending that he re-applied for the benefits each year from 2007 through 2012, the last year that he was in the Air Force. Attached to the waiver request were signed copies of each annual entitlement request. Per these documents, the requests were approved each successive year, as Applicant contends. (AE H) Applicant is awaiting a decision from the government regarding the waiver issue.

SOR subparagraph 1.e stems from a home mortgage that Applicant cosigned with his mother to help her purchase a home in 2007. (AE E at 3) In 2010, Applicant's mother suffered a disabling illness that prevented her from working. At or about this time, her husband died. Subsequently, she fell behind on the mortgage. In November 2012, Applicant applied for a loan modification, but his efforts were unsuccessful. (AE L at 2) In March 2014, the bank moved to foreclose on the mortgage. The then-balance was \$69,507. (AE F at 4) By December 2014, the bank had foreclosed the mortgage and sold the home. No deficiency remains. (AE F at 4)¹

The remaining SOR debts total \$1,516. SOR subparagraph 1.b, as duplicated in SOR subparagraph 1.d, totalling \$713, is a phone account that Applicant's mother's husband opened in his name without his knowledge. (Tr. 23) SOR subparagraph 1.c, totalling \$639, is an early termination fee that Applicant incurred for terminating a car insurance policy. SOR subparagraphs 1.f and 1.g, totalling \$164, and \$436, respectively, are miscellaneous bills that Applicant satisfied. (Tr. 25)

In October 2016, Applicant consulted an attorney to consider filing for Chapter 13 bankruptcy. (AE J) He intends to file if his debt waiver related to the allegation set forth in SOR subparagraph 1.a is denied.

As of 2014, Applicant owed \$4,778 in delinquent federal income taxes for tax year 2013. (Tr. 45) In April 2014, Applicant formally requested to pay the delinquency through an installment agreement. (AE I at 2) Since then, he has paid \$4,122. (AE I at 4) The current balance is \$656.

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."

¹Under the "Remarks" section of the credit bureau report, the letters "FRD" appear in reference to the mortgage. FRD is the credit bureau's abbreviation for "foreclosure collateral sold." (AE F at 1)

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

Applicant’s history of financial problems 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; and

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

Of the two most significant debts alleged in the SOR, Applicant provided persuasive proof supporting his contention that he does not owe one of them (SOR subparagraph 1.a), and the other debt, a delinquent mortgage, has been satisfied through a foreclosure and subsequent resale of the property. The remaining debts are nominal, including a phone account that his mother’s husband fraudulently opened in his name without his knowledge. Applicant incurred the mortgage delinquency only after his mother, who lived in the home, defaulted on her mortgage payments after experiencing a disabling illness, leaving Applicant responsible as the cosigner.

Applicant presented substantive proof supporting his contention that the agency that administered disability benefits for him, in support of his father, erroneously billed him. In an abundance of caution, however, Applicant has consulted a bankruptcy

attorney and intends to pay it through the Chapter 13 bankruptcy process if the dispute is not resolved in his favor. Under these circumstances, all of the mitigating conditions apply, and Applicant has mitigated the financial conditions security concerns.

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.

In reaching my decision, I considered Applicant's military service, the extensive length of time that he has held a security clearance, and his outstanding job performance. Upon considering this case in the context of the whole-person concept, I conclude that Applicant has mitigated the 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

Subparagraphs 1.a - 1.g:

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.

MARC E. CURRY
Administrative Judge

