



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



In the matter of:

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ISCR Case No. 15-06773

Applicant for Security Clearance

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel

For Applicant: *Pro se*

10/19/2017

Decision

Curry, Marc E., Administrative Judge:

Applicant presented persuasive evidence supporting that his delinquent debts are being resolved and that his finances are under control. 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 the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility for him. The DOD CAF took the action 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On April 6 2016, Applicant answered the SOR allegations, admitting all of the allegations except subparagraphs 1.a, 1.j, and 1.k, and requested a decision based on

the administrative record instead of a hearing. On August 1, 2016, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on August 17, 2016, and filed a response on September 8, 2016. The case was assigned to me on June 1, 2017. On August 24, 2017, I re-opened the record *sua sponte* through September 6, 2017, to allow Applicant to supplement the record with additional documents. On September 1, 2017, I extended the record to September 27, 2017, at Applicant's request. Within the time allotted, he submitted eight documents that I incorporated into the record as Applicant's Supplementary Response, Attachments 1 through 8.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.

Evidentiary Ruling

Item 4 is a Report of Investigation (ROI) summarizing Applicant's Personal Subject Interview conducted on May 28, 2014. Such reports are inadmissible without authenticating witnesses. Directive ¶ E3.1.20. Consequently, I have not considered this document in my disposition of this case.

Findings of Fact

Applicant is a 55-year-old man with one child. He has been married since 2003. He has a bachelor's degree and two master's degrees. He is an engineer who has worked for the same employer, a defense contractor, since 2007. He has held a security clearance since 1984. (Item 3 at 5-7)

Applicant has been having periodic financial problems since 2003. These problems correspond with the date he married his wife, and were the result of two individuals marrying "well into adulthood and joining [their] individual debt obligations," in addition to his wife's serious medical illness in 2005, and the birth of their daughter in 2007. (Answer at 1, 2) Nevertheless, they managed to make ends meet through 2009, when they began struggling to pay their mortgage and their line of credit on their home, as alleged in subparagraphs 1.a and 1.d. As for the primary mortgage alleged in subparagraph 1.a, Applicant sought a loan modification. After a lengthy, four-year process, the bank rejected the loan modification. In 2013, the bank initiated foreclosure proceedings, as alleged in subparagraph 1.a, alleging a \$284,405 delinquency. In 2014, the home was foreclosed and resold, leaving a deficiency of \$43,996. (Supplementary Answer, Attachment (Att.) 1. That year, the bank discharged Applicant's responsibility for the deficiency, and reported it to the Internal Revenue Service (IRS). (Supplementary Answer, Att. 1)

The holder of the second mortgage of Applicant's home also foreclosed the property, obtaining a judgment for \$71,018. In 2016, Applicant negotiated a tolling and forbearance agreement with the bank in which the bank agreed to forego legal action, so long as Applicant began satisfying the judgment, through \$500 in payments beginning in March 2016, followed by \$200 monthly payments thereafter. (Supplementary Response, Att. 2) As of September 16, 2016, Applicant has been complying with the agreement. (Response at 6)

Subparagraphs 1.b and 1.j. totaling approximately \$32,000, constitute delinquent credit card accounts owed to the same bank. Applicant contacted the creditor and consolidated these accounts. By May 2017, he had satisfied them. (Supplementary Response, Att. 3)

Subparagraph 1.c, totaling \$16,389, is a debt that Applicant originally incurred with a credit union. By September 2017, Applicant had satisfied the debt, but was unable to obtain documentary proof.

Subparagraph 1.e totals \$41,309. In September 2017, Applicant contacted the creditor to begin settlement negotiations. (Supplementary Response, Att. 6)

Subparagraphs 1.f, 1.h, and 1.i, collectively totaling approximately \$26,000, have been assigned to the same collection agent. Applicant has contacted the creditor and is negotiating a payment plan. (Supplementary Response, Att. 4)

Subparagraph 1.g, totaling \$11,392, is a credit card debt that has been assigned to a collection agent. In September 2017, Applicant's spouse contacted the creditor and arranged a payment plan. (Supplementary Response, Att. 5) Under the plan, Applicant and his wife will satisfy the debt through \$189 monthly payments.

Applicant contends that he paid the debts owed to the creditors alleged in subparagraphs 1.k and 1.l, totaling approximately \$3,500. (Supplementary Response at 2) He contacted both creditors for verification, but neither creditor agreed to provide it.

The debt alleged in subparagraph 1.m is a medical bill totaling \$52. It is one of several medical bills that Applicant's wife incurred, related to a hospitalization in 2015, collectively totaling \$2,850. In September 2017, she contacted the creditor. She satisfied the debt alleged in subparagraph 1.m, and will begin paying the remainder in \$100 monthly increments. (Supplementary Response at 26)

Applicant and his wife keep a budget. They earmark 20 percent of their monthly income toward debt payment. (Response at 2) They have incurred no new debt in approximately eight years. (Response at 3) Recently, they retained an attorney whom they periodically consult to help manage their debt payment plan. (Response at 3)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. 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 national security eligibility will be resolved in favor of the 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. 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 to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).¹

¹ The factors under AG ¶ 2(d) 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.

Analysis

Guideline F, Financial Considerations

The security concerns about financial considerations are set forth 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. . . .

Applicant's delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

The following mitigating conditions are potentially applicable:

AG ¶ 20(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debt problems stemmed from the challenge of consolidating his finances with his wife's finances after getting married in 2003, together with his wife's serious illness in 2005, and bills related to the birth of their child in 2007. As for their most significant financial problem, the 2013 foreclosure of their home, it has since been resold, and the deficiency on the first mortgage has been discharged and reported to the IRS. Under an agreement that Applicant negotiated with the holder of the second mortgage, he has been making payments since March 2016. In addition, he has reduced his indebtedness by approximately \$50,000, satisfying subparagraphs 1.b through 1.c, and 1.j through 1.m in their entirety. As for the remainder of his debts, he is either paying them through payment plans, or negotiating payment agreements.

Applicant and his wife have not incurred any additional credit card debt in eight years. They earmark 20 percent of their discretionary income to debt repayment and

consult periodically with an attorney to help them stay on track. Under these circumstances, I conclude that all of the mitigating conditions apply.

Whole-Person Concept

Some of the debts that Applicant contends that he paid were not supported by documentary evidence. Nevertheless, I found his contentions credible because he provided documentary evidence establishing his payments of the majority of the SOR debts. In addition, his disclosure of additional medical bills that were not alleged, but which he is paying through a payment plan, reflected positively on his credibility. Upon balancing the disqualifying and mitigating conditions in the context of the whole-person concept, I conclude that Applicant has mitigated the security concerns.

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.m:	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 security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge