



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



In the matter of:)
)
) ISCR Case No. 15-06932
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

06/07/2017

Decision

CREAN, Thomas M., Administrative Judge:

Applicant provided sufficient documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is granted.

Statement of the Case

On March 27, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 3) The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On April 7, 2016, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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) effective in the DOD on September 1, 2006.

Applicant answered the SOR on May 11, 2016, admitting the 12 delinquent debt allegations with explanation. He elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on June 1, 2016. (Item 5) Applicant received a complete file of relevant material (FORM) on June 8, 2016, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely filed a response to the FORM. (Item 6) Department Counsel had no objection to consideration of the submitted material. (Item 7) I was assigned the case on March 21, 2017.

Findings of Fact

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 30 years old. He graduated from high school in June 2005, and has some technical school education. He served two years of active duty in the Navy from July 2005 to July 2007, and another almost two years in the Navy inactive reserves from July 2007 until February 2009. He was granted eligibility for access to classified information in January 2005. He was employed by defense contractors in various positions from since July 2007 to present, including an assignment in Afghanistan from August 2010 until December 2012. He has been employed as an intelligence analyst for a defense contractor since February 2014. He is married with one child. (Item 3, e-QIP, dated March 30, 2015)

The SOR alleges, and a credit report (Item 4, dated April 14, 2015) confirm the following delinquent debts for Applicant: education student loans for \$7,704 (SOR 1.a), \$4,046 (SOR 1.b), \$2,563 (SOR 1.c), \$2,470 (SOR 1.d), and \$14,301 (SOR 1.e); a debt to a landlord in collection for \$1,031 (SOR 1.f); medical debts for \$864 (SOR 1.g), \$646 (SOR 1.h), \$545 (SOR 1.i), \$130 (SOR 1.j), and \$74 (SOR 1.m); and a debt for medical service for a pet in collection for \$89 (SOR 1.k).¹ The total amount of the delinquent debt is approximately \$34,374. Most of this debt is from student loans.

There is little information in the case file as to the reasons why Applicant accumulated the delinquent debts. Applicant reported most of the delinquent debts raised in the SOR on his e-QIP. He noted that he is supporting two households and cannot make full student loan payments. He is trying to make small payments on the student loans but it has become difficult. He stated he is disputing some of the medical debts. The apartment lease debt is for damage to an apartment he vacated for which he did not have a security deposit. (Item 3, e-QIP, dated March 27, 2015 at 43-50) In his response to the SOR, Applicant did not indicate how and why he accumulated delinquent debt. He concentrated his response on the actions he was taking to resolve the debts. He included a receipt for payment of the debt at SOR 1.m.

In his response to the FORM, Applicant outlined the actions he has taken to resolve the delinquent debts. He contacted all of the creditors he could identify to

¹ There is no allegation 1.l in the SOR.

establish payment plans. His student loans are consolidated and a payment plan of \$75 monthly established. Applicant provided proof of the payments made under the plan. (SOR 1.a – 1.e) He provided proof that he is making monthly payments of \$20 on the apartment rent debt. (SOR 1.f) Applicant proved evidence that he is making monthly payments of \$20 as agreed on the medical debts at SOR 1.g and 1.h. He provided evidence that \$25 monthly is withdrawn from his bank account to pay as agreed the medical debt at SOR 1.i. The creditor for the medical debt at SOR 1.j could not locate either an account or debt for Applicant. Since no debt was established, Applicant is not required to make payments to resolve the debt. Applicant claims he paid the debt for pet care at SOR 1.k, but the creditor would not provide a receipt. Applicant again provided a receipt for payment of the debt at SOR 1.m. (Item 6, Response to FORM)

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 must 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 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.

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.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

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, thereby raising questions about an individual's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet their financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

A credit report reveals, and Applicant admitted, that he had 12 delinquent debts, for student loans, medical accounts, and an apartment lease. Adverse information in a credit report can normally meet the substantial evidence standard to establish financial delinquency. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises an issue about Applicant's willingness and ability to meet his financial obligations. Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration Mitigating Conditions under AG ¶ 20:

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

There is insufficient information in the case file to determine if the mitigating conditions at AG ¶ 20 (a), (b), and (c) apply. However, Applicant incurred student loan debt deliberately and freely to finance his education. Applicant's debts are numerous, recent, and not incurred under circumstances making recurrence unlikely. The financing of his education through student loans is not an unusual circumstance or beyond Applicant's control. Applicant presented no evidence that he received financial counseling.

Mitigating condition AG ¶ 20(d) does apply. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant is not required to be debt-free nor must his plan require paying off all debts immediately or simultaneously. All that is required is that Applicant act responsibly given his circumstances. Applicant must establish that he has a reasonable plan to resolve financial problems, and that he has taken significant action to implement that plan. Applicant's plan must show a systematic method of handling debts, and Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner.

Applicant provided adequate information that he resolved, paid, or is paying all of his delinquent debts. Even though there is insufficient information to determine how and why Applicant incurred delinquent debt, there is ample evidence to establish that Applicant acted responsibly by developing payment plans for his debts. Applicant established that he is making payments under the agreed payment plans. There is clear evidence that his financial problems are being resolved and his finances are under control. His reasonable and responsible actions towards his finances is a strong indication that he will protect and safeguard classified information.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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):

(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 access to classified information must be an overall common-sense 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 considered Applicant's service in the Navy, and his service in Afghanistan as a civilian in support of the military mission. Applicant provided sufficient credible documentary information to establish that he took reasonable and responsible action to resolve his financial obligations by making payment plans to resolve his debts. He also provided sufficient evidence that he is making the required payments under the plans. Applicant demonstrated appropriate management of his finances and a record of action to resolve financial issues. Overall, the record evidence leaves me without questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has established his suitability for access to classified information. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial situation.

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.m: 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 access to classified information. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge