



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07229

Appearances

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

05/31/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On March 30, 2016, the Department of Defense (DOD) issued to 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 answered the SOR on April 29, 2016, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM). Applicant received it on July 1, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 9. Applicant responded to the FORM and provided documents that are marked as Applicant Exhibits (AE) A through J. There were no objections by either side and all evidence was admitted. The case was assigned to me on May 3, 2017.

Findings of Fact

Applicant did not admit or deny each allegation, but provided a narrative of his actions to resolve each debt. Therefore, I will consider his comments as admissions to all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 59 years old. He served in the military from 1983 to 2003 and retired. He attended a technical college, but did not earn a diploma or degree. He married in 2002 and has an eight-year-old child from the marriage. He has a 19-year-old child and two adult stepchildren.¹

Applicant disclosed on his March 2015 security clearance application (SCA) that he had been employed by a federal contractor since May 2004. He mentioned in his answer that the federal contractor he worked for went out of business in December 2013, and his finances went in a "downward tailspin."² Applicant stated that in 2014 he enrolled in a financial program (FP) to help him settle his delinquent debts. He stated that since enrolling he made progress in resolving his delinquent debts. The debts alleged in the SOR are supported by a March 2015 credit report.³

The collection account in SOR ¶ 1.a (\$5,178) is the same as the judgment alleged in ¶ 1.e. A letter from FP shows that these debts are part of Applicant's payment plan, but are not yet settled. The debt in SOR ¶ 1.f (\$7,723) is also part of the plan. FP's letter indicates that payments are being applied to a settlement on this debt.⁴

Applicant stated that the collection debt in SOR ¶ 1.c (\$4,520) is settled. He provided an email from FP that this debt is settled. The account numbers do not reflect the same debt that is alleged in the SOR that is supported by the March 2015 credit report. In Applicant's response to the FORM, he provided a document that shows the same creditor obtained a judgment that was entered against him in May 2015. There

¹ Item 3.

² Item 2.

³ Items 2, 4; AE B.

⁴ Items 2, 4; AE A. I was not able to confirm the account numbers, but note Applicant had no other debts on his credit report to the same creditor.

are no other debts from this creditor that are listed in his credit reports. I conclude it is highly likely the same debt. The judgment is paid.⁵

Applicant indicated that the debt in SOR ¶ 1.d (\$6,172) was settled. He provided an email from FP in this regard, with a partial account number that matches the last numbers of the account. This account is settled.⁶

Applicant provided statements from FP that show he is making payments on other debts that were not alleged. Applicant provided a letter from his credit union to show he has made payments to FP since March 2014. Applicant provided an Internal Revenue Service Form 1099-C, cancellation of debt for tax year 2014, for a debt that was not alleged in the SOR.⁷

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.

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

⁵ Items 2, 4; AE H, I.

⁶ Items 2, 4.

⁷ Item 2; AE F, G, and J. I have not considered any delinquent debts or accounts that were not alleged for disqualifying purposes, but will consider them when analyzing Applicant's credibility, in applying mitigating conditions, and in my whole-person analysis.

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.⁸

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

⁸ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

Applicant has delinquent debts and judgments entered against him. There is sufficient evidence to support the application of the above disqualifying conditions.

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 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 stated that he has settled or resolved some SOR debts, and other debts are part of his ongoing payment plan and will be paid in the future. Applicant did not provide any information about his current finances and obligations. He is still paying his debts. AG ¶ 20(a) does not apply

Applicant attributed his financial problems to his employer going out of business in December 2013. This was a condition beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant engaged FP in 2014 to help him settle and resolve his debts, which shows he did not ignore his financial responsibilities and began to address his delinquent debts. He has made consistent payments for more than three years and has slowly been resolving his financial delinquencies. I find he acted responsibly and AG ¶ 20(b) applies.

It is unclear if FP provided financial counseling, but his actions in engaging the company shows he attempted to address his financial problems. He did not provide a current financial statement or a list of his other financial obligations. He provided evidence that he is paying other delinquent debts not alleged. I find Applicant has an

ongoing payment plan and there are clear indications his financial problems are being resolved. AG ¶ 20(c) applies.

Applicant resolved the debt in SOR ¶ 1.d. AG ¶ 20(d) applies to this debt. Through an ongoing payment plan, he is resolving his other delinquent debts. Paying a debt after a judgment has been entered does not constitute a good-faith effort to resolve one's debts. AG ¶ 20(d) does not apply to the other debts.

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, but some warrant additional comment.

Applicant is 59 years old. He retired from the military. Applicant experienced financial difficulties after his employer went out of business in 2013. Shortly thereafter, he began working with a debt resolution company and arranged to settle and pay his delinquent debts. He has been making consistent payments for more than three years. Applicant paid debts that were not alleged in the SOR. A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). There is also no requirement that

an applicant pay every debt listed in the SOR, only that he remove concerns about his reliability and trustworthiness raised by those debts. See ISCR Case No. 14-00504 at 3 (App. Bd. August 4, 2014). Applicant has taken significant action to resolve his debts.

I considered Applicant's personal circumstances. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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.f: 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.

Carol G. Ricciardello
Administrative Judge