



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



In the matter of:)
)
) ISCR Case No. 15-08334
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

10/13/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations and personal conduct security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 13, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). 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 (AG) implemented by the DOD on September 1, 2006.¹

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant responded to the SOR on July 18, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on November 7, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM and his response from October 2016 is marked as Applicant's Exhibit (AE) 1. The case was assigned to me on July 1, 2017. The Government exhibits included in the FORM and AE 1 are admitted in evidence without objection.

Findings of Fact

Applicant admits SOR allegations ¶¶ 1.a. through 1.j, 1.p, 1.q., and 2.a, with explanations, and denies ¶¶ 1.k through 1.o. He is a 62-year-old employee of a defense contractor. He obtained a high-school diploma in 1973, an associate's degree in 1976, and a bachelor's degree in 1984. He previously worked for three defense contractors from January 2005 to August 2011, at which time he has since worked for his current employer. He was granted a DOD security clearance in October 2005. He is married and has two adult children.²

The SOR alleges 17 delinquent debts totaling \$153,614, comprised of five student loans for \$122,898 and twelve consumer accounts. While Applicant states that his son bears primary responsibility for the delinquent student loans since the loans financed his son's education, he admits that he cosigned for them. The debts are established by Applicant's admissions and the credit reports. The SOR also alleges that Applicant falsified his May 2015 Questionnaire for National Security Positions (SF 86) when he failed to list, in response to section 26, SOR debts ¶¶ 1.a., 1.b, 1.d, 1.f through 1.g, and 1.j through 1.q.³

Applicant's wife does not work outside their home. Due to his busy work schedule, Applicant's wife manages the household finances. Applicant attributes his financial problems to unforeseen family obligations, his wife's failure to pay their bills, and two pay cuts he experienced in recent years. At a date not in the record, Applicant financially supported his 30-year-old son after his son was arrested for DWI and dropped out of school. He also financially supported his 25-year-old daughter when she studied for a CPA license. In addition, Applicant was responsible for the expenses for two households. He has rented an apartment since 2010, initially for his mother to live before she died, in which his son lived at the time of Applicant's May 2015 SF 86, and in which Applicant stayed during most weekends as of his June 2015 interview with an Office of Personnel Management (OPM) investigator. He and his wife also own a home, which they purchased in 1992 as their primary residence.⁴

² Items 1-3.

³ Items 1-5; AE A.

⁴ Items 1-3; AE A.

Applicant stated that he pulled a credit report and started to pay and work on payment arrangements to resolve his SOR debts. He provided an IRS Form 1099-C to show that the creditor canceled the three student loans in SOR ¶¶ 1.k-1.m in December 2013. He provided documentation to show that he settled and paid SOR ¶ 1.a in November 2016 and that he paid SOR ¶ 1.c as of February 2016. He also provided documentation to show that he is in the process of resolving his remaining debts: (1) he made a payment towards SOR ¶ 1.f in October 2016 and indicated that he will continue to make installments of \$112 monthly; (2) he received a settlement offer in September 2016 for SOR ¶ 1.g, he made two payments accordingly in September and October 2016, and he had only two payments remaining to resolve this debt; (3) he received an October 2016 settlement offer for SOR ¶ 1.i, he made a payment accordingly in October 2016, and he had only one payment remaining to resolve this debt; and (4) he received settlement offers in 2016 for SOR ¶¶ 1.e, 1.h, and 1.o, and was pending receipt of the payment installment schedules to begin making payments to address these debts. He intends to continue resolving his remaining delinquent debts.⁵

Applicant stated that he was unaware of the delinquent status of his debts when he completed his SF 86 in May 2015. As previously stated, Applicant indicated that his wife was responsible for managing the household finances since she does not work outside their home and he has a busy work schedule. He learned of his delinquent debts and his wife's failure to pay their bills when he ran a credit report after he completed his SF 86. He did not run a credit report when he completed his SF 86 because he was overwhelmed at work. In discussing his debts during his June 2015 interview with an OPM investigator, he maintained that he did not intentionally falsify his SF 86.⁶

Applicant indicated that he intends to continue monitoring and managing his credit. His character references, to include his supervisor, describe him as a trustworthy individual. He provided certificates of appreciation presented to him for his outstanding work performance.⁷

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 list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's

⁵ Items 1-3; AE A.

⁶ Items 1-3; AE A.

⁷ Items 1-3; AE A.

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.”

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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.

Section 7 of EO 10865 provides that adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant was unable or unwilling to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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.

Circumstances beyond Applicant's control contributed to his financial problems. Three of his largest debts were canceled by the student loan creditor. He paid two debts. He is resolving his remaining debts. While Applicant has outstanding debts, he has demonstrated a good-faith effort, and he has the financial means to continue resolving them. A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). AG ¶¶ 20(a) to 20(d) are applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect

classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities

I find that Applicant did not intentionally falsify his SF 86. He was unaware of the delinquent status of his debts when he completed it in May 2015. His wife was responsible for managing the household finances since she does not work outside their home and he has a busy work schedule. He learned of his delinquent debts and his wife's failure to pay their bills when he ran a credit report after he completed his SF 86. AG ¶ 16(a) is not established.

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(d):

(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 and Guideline E in this whole-person analysis.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations and personal conduct 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
Subparagraphs 1.a-1.q:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	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.

Candace Le'i Garcia
Administrative Judge