



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



In the matter of:)
)
) ISCR Case No. 14-06586
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

06/07/2018

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant had four collection accounts, which totaled approximately \$58,000. He mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is granted.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on January 29, 2015, the DoD issued a Statement of Reasons (SOR) detailing financial considerations security concerns. On March 2, 2015, Applicant answered the SOR and elected to have the matter decided without a hearing. On June 17, 2015, Defense Office of Hearings and

¹ Executive Order 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 (Sept. 1, 2006 AG) effective within the DoD on September 1, 2006.

Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM). The FORM contained six attachments (Items). On January 5, 2016, Applicant received a copy of the FORM, along with notice of his opportunity to object to the Government's evidence and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. On November 4, 2016, Applicant responded to the FORM with a 24 page response. The response was admitted into evidence, without objection, as Items A through F. On August 1, 2017, I was assigned the case.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.²

Findings of Fact

In Applicant's answer to the SOR, he admitted a \$16,066 judgement, a \$26,039 charged-off credit card account, and two collection accounts in the amounts of approximately \$4,800 and \$11,000. The SOR delinquent debts total approximately \$58,000. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 48-year-old production supervisor who has worked for a defense contractor since May 2010. He seeks to obtain a security clearance. (Item 3) He is married and has two children. (Item 3)

In Applicant's March 2014 Electronic Questionnaires for Investigations Processing (e-QIP), he indicated he was working with a debt resolution company to address his delinquent obligations. (Item 3) He stated he was paying \$558 every two weeks. He indicated he owed approximately \$63,000 to the four creditors listed in the SOR. In his e-QIP he stated,

Over extended my credit and couldn't afford to pay them. They raised the interest rate. Had to put one of my sons in private school. Had to start supporting my Mother in Law after my Father in Law passed. I tried to pay each month but I was only going backwards.

In Applicant's May 2014 Personal Subject Interview, he freely volunteered that in 2013 he reviewed his finances and realized he was only paying the interest on his credit card accounts and not reducing the balance owed. (Item 4) His son was struggling in school and he was placed in a private school for two years with tuition of \$8,000 per year.

² Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

(Item 4) The tuition was put on a credit card (SOR 1.a, \$16,000). (Items 4, 5, and 6) As of March 2014, the balance owed on this account was \$5,852. (Item A) He has agreed to pay \$250 monthly on the balance. (Item A)

In August 2013, Applicant sought the services of a debt resolution company. The company told him to stop all payments on his credit cards so that the company could make settlement offers on the accounts. (Item 4) Applicant asserts that prior to this advice he had never been late on payments and had never stopped making payments to his creditors. (Item 4) He has always been current on his \$1,889 monthly mortgage payments and utility bills. (Items 4 and 6) After two or three months with the debt resolution company, settlement agreements were reached with the creditors.

Applicant's checking account is debited \$558 every two weeks by the debt resolution company. (Item C) The debited amount is paid into a trust account from which the debt resolution company makes disbursements to the SOR creditors. (Item F) The total debt of \$68,710 was reduced to \$27,484 through settlement negotiations. (Item C) The repayment plan included all four SOR debts. (Item C) plus two debts not listed in the SOR. The repayment plan included a \$7,152 debt also owed to the creditor listed in SOR 1.d and a \$5,651 debt also owed to the creditor listed in SOR 1.a. (Item F)

The \$26,000 charged-off debt (SOR 1.b) resulted from using his credit card to start a business. (Items 4, 5, and 6) A settlement agreement with this creditor was reached whereby he would pay \$8,932. He is paying \$380 monthly on this debt. (Item E) He used the credit card listed in SOR 1.d (\$11,101) for household expenses such as gasoline and groceries. (Items 4 and 6) The bank card listed in SOR 1.c (\$4,817) was used to install solar panels on his home's roof, to supply hot water, and for an attic fan.

Applicant's April 2014 credit report lists the two collection accounts listed in SOR 1.c and 1.d and lists two charged-off accounts (SOR 1.a and 1.b). (Item 5) The credit report also lists 24 accounts as "pays as agreed." (Item 6) There is no evidence of Applicant having received financial counseling.

In April 2014, Applicant reached a settlement agreement with a credit card company where he would pay \$160 monthly on a \$3,069 debt. (Item B) This agreement settled a \$7,672 debt, which was not listed on the SOR, but which is evaluated for the purpose of determining Applicant's conduct in resolving his financial obligations.

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 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(a), the adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

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.

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 Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure 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 or sensitive information . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 repay debts under agreed-upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

The SOR lists a judgment and two additional delinquent obligations totaling approximately \$58,000. AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" and "(c) a history of not meeting financial obligations." The Government's evidence and Applicant's own admissions raise security concerns under AG ¶¶ 19(a) and 19(c). The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005)).

Four of the seven Financial Considerations 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, a death, divorce or separation, clear victimization by predatory lending practices or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual 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

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

In Applicant's March 2014 e-QIP he listed his financial problems and explained how the problems arose. In August 2013, seven months before completing the e-QIP he sought financial assistance to address his delinquent accounts. He sought debt resolution

was more than a year before his May 2014 interview. He has made a good-faith effort to resolve his delinquent debts. He agreed to have \$558 debited from his checking account every two weeks and paid into a trust account. From this trust account the debt resolution company makes monthly payments to the four SOR creditors.

Until told by the debt resolution company to stop making payments on his credit card accounts, Applicant had always made his monthly payments in a timely manner. He made minimal payments, but the amount owed was not being reduced. His 2014 credit report reflects the four delinquent SOR obligations, but also reflects 24 accounts as being “paid as agreed.” There were only four delinquent accounts. One account was used to pay for his son’s tuition at a private school. Such an expense is unlikely to recur. Another account was to open a business, something that is also unlikely to recur. AG ¶ 20(a) has some applicability.

As previously stated the largest debt (\$26,000) was due to attempting to start a business. Applicant has taken steps to address his delinquent accounts. AG ¶ 20(b) has some applicability to this debt because a business downturn is an unexpected financial condition largely beyond one’s control.

There is no evidence of financial counseling, however, there are indications the problem is being resolved or is under control. Applicant provided evidence of what responsible steps he has taken to pay or resolve his delinquent obligations. Having reached settlement agreements with the four creditors and making payments in accordance with those repayment agreements demonstrates that AG ¶ 20(d) applies.

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). The SOR debts have not been fully paid, but he has demonstrated a good-faith effort in his history of making regular payments on his debts, and has the means to continue to resolve them.

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.

Applicant knew he had financial problems and took steps to address those problems prior to completing his e-QIP and prior to his interview. He started paying \$558 every two weeks into a trust account which makes payment to the four SOR creditors. This amounts to payments of approximately \$14,500 yearly, not an insignificant sum. Applicant is attempting to address his financial problems. Other than the amounts owed to the four SOR creditors, he has paid his mortgage, utilities, and other accounts in a timely manner. He only stopped paying these four credit card accounts on advice of the debt resolution company in order to secure settlement agreements. It was this advice that caused the accounts to become delinquent.

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The issue is not simply whether all the delinquent obligations have been paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(c)) Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the financial considerations 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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.d: 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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge