



Applicant for Security Clearance

Appearances

For Government: Benjamin Dorsey, Esq. Department Counsel

For Applicant: *Pro se*

04/06/2018

Decision

MURPHY, Braden M., Administrative Judge:

Applicant's financial difficulties are largely due to circumstances beyond his control, including periods of unemployment, under-employment and low income. He is now fully employed and working two jobs, and his finances have stabilized. He is making responsible efforts to resolve his debts. He has mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 24, 2014. On August 23, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.¹

Applicant answered the SOR on October 20, 2015, and requested a decision on the written record, in lieu of a hearing. He later changed his mind, and on November 10, 2016, he requested a hearing. The case was initially assigned to me on August 14, 2017, and a hearing was initially scheduled for November 1, 2017. That hearing was canceled on October 23, 2017, after Applicant lost his sponsorship for a clearance. I was later reassigned the case after he regained his sponsorship.²

On February 14, 2018, a Notice of Hearing was issued scheduling the hearing for March 1, 2018. The hearing convened as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through GE 6. All exhibits but for GE 2 were admitted without objection. Applicant objected to GE 2, and it was not admitted.³ Applicant testified and offered Applicant's Exhibits (AE) A through AE R, all of which were admitted without objection. I held the record open after the hearing to allow Applicant the opportunity to submit additional documentation. He timely submitted AE S through AE W, all of which were admitted without objection. The record closed on April 3, 2018. DOHA received the transcript (Tr.) on March 8, 2017.

On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG). These AGs apply to all adjudicative decisions issued on or after June 8, 2017.⁴ Any changes resulting from the issuance of new AGs did not affect my decision in this case.

Findings of Fact

Applicant admitted SOR ¶¶ 1.d and 1.h, and he denied SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.f and 1.g, all with explanations. His admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old. He earned a bachelor's degree in 2011. He married in 2007. He and his wife are currently separated. They have a seven-year-old daughter. They each have daughters (ages 16 and 19, respectively) from prior relationships. Applicant's daughter lives with her mother, and he pays child support. (Tr. 61, 64-67, 141; GE 1. GE 6; AE B)

Applicant purchased a home (House 1) in November 2001. He and his wife lived there until April 2010, when they purchased a larger home (House 2) in the same neighborhood, before their daughter was born. Applicant testified that since the purchase of House 2 was not contingent on the sale of House 1, they decided to use House 1 as a rental property. (Tr. 93-95; GE 1; AE B) The largest SOR debts (¶¶ 1.a, 1.b and 1.c) concern these properties.

² Hearing Exhibit I.

³ Tr. 24-28.

⁴ Applicant received the new AGs along with the Notice of Hearing. HE II.

Applicant testified that from 2010 to late 2012, they rented House 1 to successive tenants without any problems. He had to pursue the third tenant multiple times in landlord-tenant court for unpaid rent. Each time the payment problem was rectified but only briefly. This tenant moved out in late 2013. The fourth tenant had no issues. Applicant testified that in about July 2016, when he and his wife separated, she moved into House 1, where she remains. (Tr. 95-99; 142-147; AE B)

Applicant has been employed off and on, in the defense industry and otherwise, since June 2008. He held his first industry position until April 2010, when the contract ended. He was granted an industrial security clearance for that job in January 2009. He moved to a new position in May 2010, and held that job until the contract ended in September 2011. (Tr. 16, 69, 77; GE 1; AE A)

Applicant was then unemployed for about two months. He began a new government contractor position in November 2011. That contract ended in July 2013, due to budget sequestration. He was then unemployed until October 2013. Applicant testified that, along with the rental issues, his unstable employment situation was chiefly what led to his financial problems. (Tr. 151-153; GE 1; AE A; AE B)

In October 2013, Applicant began a new position with another defense contractor. He testified that his employer requested that he apply for a higher level clearance. At the time, Applicant knew he would soon begin his periodic reinvestigation for his clearance. (Tr. 68-79) Applicant submitted his most recent SCA in January 2014. (GE 1) He testified that the initiation of a new investigation prevented the processing of an application for the higher-level clearance. While there is no way at this point to know if this is true, Applicant testified that as a result, he was laid off from the position in June 2014. He was also turned down for other federal employment during this period. (Tr. 70-79; AE B; AE C)

Applicant was unemployed until October 2014. He then worked as a systems analyst for a large computer company and defense contractor until July 2015. He then briefly moved to a new job with another large defense contractor until September 2015. (Tr. 79-83, 153-155; AE A)

In September 2015, Applicant accepted a federal government position with an organization connected to the United States Marine Corps. (Tr. 83-85, 106-107) He did not need a security clearance for that job, but he submitted a Questionnaire for Non-Sensitive Positions (SF-85) in August 2015. Applicant was terminated from that position in February 2016, before the completion of his one year probationary period, after what he said was a personality conflict with his supervisor. (Tr. 87; 99-107; AE H)

Applicant was then largely unemployed for the next year. (Tr. 155) He had several job offers, but they were contingent on his eligibility for a clearance. By this time, the SOR was pending adjudication, which he believed had an impact on his employability in the defense industry. (Tr. 103-104, 107, 112-113; AE K, AE M) Applicant had part-time, seasonal work as a musician, but he earned only a few thousand dollars, not nearly enough to live on. He had little other income during this

period. (Tr. 63-64, 85-86, 101; AE D, AE J) He made early withdrawals from his 401(k) retirement account. (AE D) This led to tax consequences (discussed below). (Tr. 86-87) He also collected unemployment compensation from the state. (Tr. 113-114; AE N) During these years, Applicant's annual salary dropped from \$95,000 to \$80,000. (AE B)

Since February 2017, Applicant has worked full-time at a job outside the defense industry, at an annual salary of \$70,000. Since shortly before then, he has also worked 16 hours a week at a large hardware store to supplement his income. He earns about \$600 a month there. He remains sponsored for a security clearance. (Tr. 62-63, 81, 107-109, 113-119, 155; AE O) Applicant estimated that his wife earns about \$30,000 a year in her job. (Tr. 149)

The SOR is based on credit reports from February 2014 and November 2014. (GE 3; GE 4) The Government's evidence also includes later credit reports, from December 2016 and February 2018. (GE 5; GE 6)

SOR ¶ 1.a is the mortgage on House 2, Applicant's current home. As of November 2014, the account was \$10,425 past due, with a total loan balance of about \$285,000. (GE 4 at 1) The same month, Applicant and his wife were notified that the mortgage was in foreclosure. Around this time, Applicant first applied to modify his mortgage on hardship grounds. That was initially denied, though he avoided foreclosure. (Tr. 87-96, 122-124; AE E; AE F; AE G) Applicant had brief credit counseling in connection with this program. (Tr. 141)

Applicant reapplied for mortgage modification in October 2016, during his most recent period of unemployment. (Tr. 112; AE L) The mortgage on House 2 was modified in mid-2017, and is current as of March 2018. (Tr. 57-58; 91-93; GE 6; AE R)

SOR ¶ 1.b is the mortgage on House 1, formerly the rental property. As of November 2014, it was \$931 past due. The total balance on the mortgage at the time was about \$91,500. (GE 4) A December 2016 credit report showed that the account was at that time \$4,535 past due. (GE 5) The most recent credit report shows that the account was closed in December 2017 and transferred to another lender. The line item notes that the account was "not more than three payments past due." (GE 6) Applicant testified that his wife pays him and then he pays the mortgage lender. He testified that the account was then 30 days past due. (Tr. 96-99, 149-150) After the hearing, Applicant provided documentation from the new lender verifying that the loan is current, with a monthly payment of \$662 and a total balance of about \$87,429. (AE W)

SOR ¶ 1.c is a charged-off home equity loan of about \$105,000. (GE 3; GE 4; GE 5) The account relates to House 1. Applicant opened the account in March 2005. It became past due in September 2011 and was charged off in August 2013. (GE 5) At hearing, Applicant submitted an IRS Form 1099C from the creditor bank for tax year 2015, establishing that the bank had canceled and forgiven the debt in the amount of \$99,914. (Tr. 100-101, 124, 147-149; AE I) The Government's credit reports also note that the debt is a "paid charge off." (GE 5; GE 6)

SOR ¶ 1.d (a \$125 past-due gas bill) was paid in 2016. (Tr. 61; GE 5; GE 6) SOR ¶ 1.e is a student loan account, which was \$316 past due as of February 2014. (GE 3) Applicant denied the debt in his answer, asserting that the account was current as of October 2015. Subsequent credit reports all show the account as current, with a recent balance due of \$7,468. (GE 4, GE 5, GE 6) Applicant testified that the account remains current. (Tr. 132-133)

SOR ¶ 1.f is a \$347 medical debt that was placed for collection in 2011. (GE 3) Applicant explained that the debt is due to a dispute with his insurance company. The debt does not appear on any other credit reports in the record. He testified that the debt has been paid by his insurer. (Tr. 133-134; Answer)

SOR ¶ 1.g is a \$930 charged-off debt to a hardware store (not the one for whom Applicant currently works part time). (GE 3) The debt does not appear on any other credit reports in the record. Applicant provided proof after the hearing that the creditor had closed the account, and that no money was owed. (Tr. 134-135; AE S)

SOR ¶ 1.h is for an unpaid \$250 traffic ticket. (GE 3) Applicant admitted the debt and said he would pay it. He believed the debt had been paid. (Tr. 135-136)

Applicant has other ongoing delinquent debts, not alleged in the SOR. As of February 2018, he has delinquent homeowners' association (HOA) dues and related fees and penalties for both House 1 (\$5,479) and House 2 (\$3,790). He proposed a repayment plan to the HOA and requested that a portion of the debt be waived. This was denied, and the debt remains pending. (Tr. 109-111, 140, 150-151, 162-163; AE K; AE P; AE Q)

Applicant also has past-due state and federal income taxes. In his letters to the HOA, he acknowledged that he owed \$25,000 in past-due federal income taxes, and that the IRS had recently begun garnishing his wages. (AE P, AE Q) Applicant testified that because of recent payments towards the debt, he believes he owes about \$16,000 to the IRS. He also acknowledged past-due state income taxes of about \$6,000, from tax year 2015. He also testified that he recently filed an amended federal tax return for that year, which he believes may lower his past-due tax owed. (Tr. 124-132, 141)

Applicant testified that his tax debt is due to two circumstances: (1) his early withdrawal of funds from his 401(k) and (2) the cancellation of SOR ¶ 1.c, which led to \$99,914 in taxable income in tax year 2015. (Tr. 124, 132, 156-157; AE D; AE I) He testified that he also paid \$2,000 in both December 2017 and January 2018 towards his federal tax debt. (Tr. 125) For a period of time, his wages were being levied by the IRS, but the levy has now been released and he is on a payment plan (\$125 per paycheck). (Tr. 140, 161; AE T)

Applicant also acknowledged at hearing that he did not file his income tax returns for tax years 2013, 2014 and 2015 until he filed them together, in December 2016. These returns were therefor not timely filed, as required. He said the IRS kept \$4,000 in refunds from tax years 2013 and 2014 because of the tax due for tax year 2015. (Tr.

124-125, 140, 156-165) He testified that his tax filings were current at the time of the hearing. (Tr. 129-130) These late-filed tax returns were not alleged in the SOR, nor was the tax debt.

Having found steady employment, Applicant believes that his finances are improving and that he will be able to continue to resolve his debts. He testified that he earns a net income of about \$4,400 a month. He follows a budget. His intentions are to pay and resolve his past-due debts as best he can, and keeping current on his monthly obligations. (Tr. 111, 119-124, 160)

Numerous friends, colleagues and co-workers submitted references on Applicant's behalf. They regard him as diligent, hard-working, and tenacious. He has a strong work ethic and is passionate about his profession. He is honest, trustworthy and responsible. Several references were aware of his financial issues, and noted that he has handled them responsibly. His family is important to him, and he is a good friend. (AE V)

Policies

It is well established that no one has a right to a security clearance.⁵ As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."⁶

The AGs 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 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 national security eligibility will be resolved in favor of the national security." Under ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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.

⁵ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance").

⁶ 484 U.S. at 531.

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

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Given Applicant's financial history, the following disqualifying conditions are applicable in this case: AG ¶¶ 19(a) inability to satisfy debts; and 19(c) a history of not meeting financial obligations.

Conditions that could mitigate 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, 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 financial 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 and is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provided documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

At various periods since 2011, Applicant has been either unemployed or underemployed. Several times, he lost jobs at the end of employment contracts. Most recently, he was unemployed from February 2016 to February 2017 after he was terminated due to a personality conflict with a supervisor. Applicant's employment instability in recent years was nevertheless largely beyond his control. He and his wife also had problematic renters for most of 2013. This situation was also beyond his control. As a result of these various circumstances, Applicant has had several years of financial hardship. He fell behind on several debts. This included the mortgage and home equity loan for House 1, the mortgage on House 2, and other smaller debts, all of which are alleged in the SOR, as well as other, unalleged debts that are ongoing. The first prong of AG ¶ 20(b) therefore applies.

For full credit under AG ¶ 20(b), an applicant must have acted responsibly under the circumstances. Applicant has been working two jobs since early 2017, and has taken significant steps towards financial stability. He modified the mortgage on his current home (SOR ¶ 1.a) and it is now current. The mortgage for House 2, where his wife now resides (SOR ¶ 1.b), is also now current. The second mortgage for that home (SOR ¶ 1.c) was cancelled and is now resolved. Applicant's student loan account (SOR ¶ 1.e) is current. SOR ¶ 1.d was paid some time ago.

Applicant also has ongoing state and federal income tax debt. This is due to the cancellation of the home equity loan (SOR ¶ 1.c) and his early withdrawal of funds from his 401(k) retirement plan. Applicant and his wife are also behind on their HOA payments. These past-due debts are not alleged in the SOR, and therefore cannot be considered as disqualifying conduct. However, they can be considered in weighing evidence of mitigation, rehabilitation, and changed circumstances.⁷ These debts, though unalleged, largely stem from the same set of circumstances as the debts in the SOR.

⁷ ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

Applicant failed to timely file his income tax returns for tax years 2013, 2014 and 2015. He filed those returns together in late 2016. This was also not alleged, but can be similarly considered. Applicant had a responsibility to file his income tax returns in a timely manner even during a period of employment instability. His failure to do so was not responsible. Even though these returns are not alleged, I therefore cannot give Applicant full credit under AG ¶ 20(b).

The fact that the tax debts and the HOA debts remain outstanding precludes application of AG ¶ 20(a) even though the SOR debts are being resolved and are now current. Applicant and his wife are also carrying two mortgages and are currently separated, so his personal life remains in flux. AG ¶ 20(a) does not apply.

An applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan.⁸ I find that Applicant has acted responsibly given his circumstances, has developed a reasonable plan to resolve his debts, and has provided documented evidence of his efforts and intent to put that plan into effect. Further, even though Applicant has only briefly been through credit counseling, he nonetheless has established that there are clear indications that his financial problems are being resolved or are under control. AG ¶ 20(c) therefore partially applies.

The SOR debts are largely resolved. A federal income tax levy on his wages has been released, and Applicant is in a repayment plan with the IRS. He is gainfully employed, and is working two jobs to make ends meet. Applicant has made, and continues to make, significant reasonable efforts to resolve the situation as best he can. AG ¶ 20(d) does not apply to SOR ¶ 1.c, since the debt has been cancelled by the creditor, rather than repaid by Applicant through his own good-faith efforts. The debt is nonetheless resolved. AG ¶ 20(d) otherwise applies.

Applicant denied SOR ¶¶ 1.a, 1.b, 1.c, and 1.e. He provided updated documentation establishing that these debts are current or resolved. AG ¶ 20(e) therefore applies to them. He also denied SOR ¶ 1.f, a small medical debt, attributable to an insurance dispute, and SOR ¶ 1.g, a small traffic ticket, and said the debts had been paid. Neither debt is of a security significant amount, so they, too, are resolved for Applicant.

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(c):

⁸ ISCR Case No. 07-06482 at 3 (App. Bd., May 21, 2008).

(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. I observed Applicant's demeanor during the hearing, and found him to be an honest, credible witness. His demeanor at hearing comported with the character traits to which his references attested.

Applicant has brought his SOR debts current and has established that he is making a good-faith effort to resolve them. Other significant, unalleged debts remain. However, in working two jobs, he is doing what he can to resolve his debts as a whole, and I believe his efforts will continue. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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, Guideline F:	FOR APPLICANT
---------------------------	---------------

Subparagraphs 1.a-1.h:	For Applicant
------------------------	---------------

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge