



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 15-07501
)
Applicant for Security Clearance)

Appearances

For Government: Robert B. Blazewick, Esq., Department Counsel
For Applicant: *Pro se*

05/17/2018

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information and documents to mitigate financial considerations security concerns.

Statement of the Case

On April 1, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to grant a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated April 19, 2016, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order (E.O.) 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) effective in the DOD on September 1, 2006.

Applicant answered the SOR on May 12, 2016. He admitted ten and denied two of the allegations of delinquent debt. Department Counsel was prepared to proceed on February 27, 2017, and I was assigned the case of September 26, 2017. DOD issued a notice of hearing on March 1, 2018, for a hearing on March 22, 2018. I convened the hearing as scheduled. The Government's three exhibits (GX 1-3) were admitted into the record without objection. Applicant and two witnesses testified. Applicant introduced five exhibits (AX A through AX E) that were admitted into the record without objection. I left the record open for Applicant to submit additional documents. On May 4, 2018, Applicant timely submitted nine additional documents that were admitted into the record as AX F to AX N. Department Counsel had no objection to admission of the documents. (GX 4) I received the transcript of the hearing (Tr.) on March 30, 2018.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing *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 individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and were effective on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Findings of Fact

After a thorough review of the record, I make the following findings of fact. Applicant is 32 years old. He first married in November 3, 2007, and divorced in November 5, 2009. He married his second wife on November 11, 2009. They are still married but separated. He has four children, one from his first marriage who lives with his first wife. His second child was born out of wedlock and lives with the mother. His two other children live with their mother, his second wife. He is current with child support to all of the children. He has two stepchildren from his second wife.

He earned a General Education Diploma (GED) in 2006, and received a bachelor's degree in Information Systems Security in 2016. He served on active duty in the U.S. Army from November 2006 until 2011 and received an honorable discharge. He was deployed for one year to Iraq while on active duty. Applicant was previously employed as a corrections officer in another state. He did not have a large income, and it was not sufficient to meet his second wife's spending habits. He separated from his second wife, moved to his present location, found a good paying job, and finished his education. His income is sufficient for him to meet all of his family support obligations and pay his debts. He has been employed since December 2013 as a tech support coordinator for a government contractor. (Tr. 16-20; GX 1, e-QIP, dated April 1, 2015)

The SOR lists, and credit reports (GX 2, dated April 22, 2015; GX 3, dated March 18, 2018) confirm the following delinquent debts for Applicant; apartment rent in

¹ I considered Applicant's case under both the September 1, 2006 AGs, and the June 8, 2017 AGs. My decision would be the same under both AGs.

collection for \$117 (SOR 1.a); a credit card account in collection for \$416 (SOR 1.b); a telephone service debt in collection for \$985 (SOR 1.c); a credit card charged off for \$4,866 (SOR 1.d); a credit card charged off for \$2,986 (SOR 1.e); a credit card charged off for \$7,642 (SOR 1.f); a communications service contract debt in collection for \$530 (SOR 1.g); a credit card debt charged off for \$2,648 (SOR 1.h); a credit card debt in collection for \$4,505 (SOR 1.i); telephone service contract debt placed for collection for \$731 (SOR 1.j); a debt to a service company placed for collection for \$430 (SOR 1.k); and a car rental company debt placed for collection for \$100 (SOR 1.l). The total amount of delinquent debt is approximately \$25,000. He made only about \$900 every two weeks as a corrections officer in his home state. After paying child support, Applicant had little money left to support his family and pay debts. In 2013, he moved to a bigger city and found his present employment earning about \$4,800 every two weeks. (Tr. 18-22)

Applicant attributes most of the debts to his second wife's spending habits. She would rent apartments and then move after a few months to a new apartment. Applicant's wife also used credit cards that he had co-signed to purchase unneeded items. Applicant stated that his wife believes that a bank auto-draft is just a means for extra money for her. Her financial habits were one of the reasons they separated. Applicant claims to have paid off four debts from apartment rentals and five bank credit cards or loans. He did not provide any documentation to verify payment of these debts. He is attempting to resolve his credit and get it back on track. He has not consulted any credit service company to help manage his finances. (Tr. 34-36)

The apartment rent debt at SOR 1.a has been paid and satisfied. Applicant presented a paid in full letter from the collection agency. (Tr. 23-25; AX E, Letter dated February 28, 2018)

The credit card debt at SOR 1.b was incurred in 2009 when Applicant received the pre-paid card with a balance of \$60. Applicant did not use the card. He inquired about the debt when he learned it was on his credit report. He contacted the collection agency to inquire how the debt since he did not use the card. Applicant disputed the debt and was told that if he provided certain information he could settle the debt for \$136, or he could wait for it to drop from his credit report. Applicant was reluctant to provide the information, so the debt dropped off his credit report based on the passage of time. (Tr. 29-30, 46-49)

The debt at SOR 1.c is for a wireless telephone service. Applicant opened an account with the service provider in 2013. The provider told him their records show that he previously had an account with them. Applicant disputed that this was his debt, but he settled the debt and paid the settlement. (Tr. 30-31, 49-50; AX C, Receipt dated November 24, 2015)

The debt at SOR 1.d was a loan Applicant and his second wife incurred in 2010 to pay some bills. The arrangement with the lender was that if Applicant left the military, the loan payments would be waived. When he left the military, he provided the lender with his discharge document (DD Form 214). He never heard from the lender so he

assumed the debt had been waived. He learned that the debt may be still active during the security clearance process. He is disputing that he still owes the debt. He has not made a payment on the debt. (Tr. 32-33, 50-51)

The debt at SOR 1.e is the balance on a car loan for his wife's repossessed car. She needed a larger car because she had a fourth child. His wife was the original borrower and he co-signed the loan. Applicant called the collection agency to negotiate a payment plan but the collection agency was not cooperative, and they could not reach a settlement. (AX F, Statement, dated May 3, 2018) Applicant has not made a payment on the debt because he is prioritizing his debts, and this debt is not a priority for him since it is primarily his wife's debt. He will enter a payment plan once he has paid other debts. (Tr. 33-35, 51-53)

The debt at SOR 1.f is a car loan Applicant entered in 2007 for a used sports car. The debt is not on his credit report, but Applicant admits he did not make any payments on the debt. He signed the loan because he was in the military, needed a car, was only 21, and was told by his sergeant that the dealer would give him a good deal. He intends to dispute the debt but he has not formally disputed it yet. (Tr. 36-42, 52-53; AX K, Sales Contract, dated June 23, 2007)

The debt at SOR 1.g is for television and internet service his wife contracted for when he moved into military housing. He believes his wife paid the debt since it is not on his credit report. He was unable to present documentation that the debt has been paid. (Tr. 42-43, 53-54)

The debt at SOR 1.h is for a credit card used by applicant's second wife. Applicant's latest credit report shows that the debt has been paid and closed. (Tr. 53-54; AX A, Credit Report, dated March 6, 2018, at 15) The debt at SOR 1.i pertains to a loan that has been paid in full. (Tr. 22-26; AX D, Letter, dated November 23, 2015)

The debt at SOR 1.j pertains to Applicant's cell phone service account that he suspended before he deployed to Iraq. The provider informed him that while he was deployed they would suspend his account and he would not be responsible for any service charges. When he returned at the end of his deployment or while on leave, the account would be reactivated. When he came home from Iraq, the provider informed him that there was a large service charge on the account. He paid the charge, and changed his plan to a pay-as-you-go plan. He never used the phone again and did not know he had a new debt with the service provider. While he disputed the charge, he recently settled the account and paid the settlement. (Tr. 44-45, 54-55; AX J, Bank Statement, dated May 3, 2018)

The debt at SOR 1.k pertains to utility service incurred by his second wife when she lived in the state. Applicant and his second wife had separated, and he did not live in the house, but his name was on the lease. He did not know about the debt until it was raised during the security clearance process. He called the utility company and paid the debt. (Tr. 45-46, 55-56; AX J, Receipt, dated May 2, 2018)

The debt at SOR 1.I pertains to a car rental. Applicant presented sufficient documentation that the debt has been paid and resolved. (Tr. 46, 56-57; AX I, Receipt, dated May 3, 2018) Applicant testified that he paid other debts not listed on the SOR. (Tr. 57-58)

A co-worker testified that he has known Applicant for about four years, and socializes with him outside of work. He knows about Applicant's wife not being careful with finances. Applicant's is a good worker. He is punctual, completes tasks timely, and never has work-related issues. He is reliable and trustworthy. The witness has a security clearance and recommends that Applicant be granted eligibility for access to classified information. (Tr. 59-64)

Applicant's supervisor testified that he has supervised Applicant since 2013 and knows his character very well. Applicant is extremely dependable, punctual, and produces quality work. He receives information all of the time concerning the quality of Applicant's work. He has talked to Applicant and knows that his financial problems are caused by his wife's spending habits. Applicant moved to his present location for a better paying job. Applicant's wife is still located in another state. The witness recommends that Applicant be granted eligibility for access to classified information. (Tr. 64-71)

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(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." 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 in seeking 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 the 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.

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, all of which can raise questions about a person’s reliability, trustworthiness, and ability to protect classified or sensitive information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her 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 or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet 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.

Credit reports and Applicant’s admissions establish that Applicant has delinquent consumer bills and credit card debts. The evidence is sufficient to raise the following security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

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

The available evidence shows Applicant's inability to satisfy debts because of low salary and his spouse's spending habits. This financial problem raises issues about Applicant's ability to meet his financial obligations. Once the Government has established an 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual has initiated and is adhering to a good-faith effort to repay the overdue creditors or otherwise resolve debts.

Applicant's debts are numerous and recent. The debts were incurred by Applicant's wife's use of credit cards to purchase unnecessary items. He presented sufficient information to establish that most of the SOR debts were incurred because of his wife's irresponsible spending habits. Applicant was unable to be current with payment of the debts because of his low-paying correctional officer's job. His wife's spending habits and his low paying job were beyond his control. He acted responsibly by moving to an area where he could find good paying employment. He contacted his creditors establishing payment arrangements. He established payment plans to pay as much of the debts as he could under the circumstances.

Applicant acted in good faith towards his debts. 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. 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. His plan does not require paying off all

debts immediately or simultaneously. 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 on his plans to pay and resolve his delinquent debts. Applicant provided sufficient documentation to establish that he paid or was paying seven SOR debts (SOR 1.a, 1.c, 1.h, 1.i, 1.j, 1.k, and 1.l). He claims to have resolved another debt (SOR 1.g), but he was unable to provide any documentation indicating he had resolved the debt. He is disputing two debts (SOR 1.b and 1.d), and he has not taken action to resolve two other debts (SOR 1.e and 1.f). He intends to take payment action on these debts after paying his other debts. He also provided some information that he resolved other debts not listed in the SOR. Applicant did not present evidence of receiving financial counseling or advice. AG ¶¶ 20(a), 20(b), and 20(d) apply. AG 20(c) does not apply.

Applicant has shown sufficient action to resolve his delinquent debts. Applicant provided enough details and sufficient documentation to show proof of payments, correspondence to or from the creditors to establish maintenance of contact, evidence of attempts to negotiate payment plans, or other evidence of progress or resolution. There is sufficient evidence to establish why Applicant was unable to make greater progress resolving all of his debts. There is sufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. He has shown a good-faith effort to resolve these debts. His reasonable and responsible actions towards his finances is a strong indication that he will protect and safeguard classified or sensitive information. Under all these circumstances, Applicant mitigated financial security concerns.

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(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 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 the recommendation of Applicant's supervisor and co-worker that he is trustworthy and reliable and should be granted eligibility for access to classified information.

Applicant established that he took reasonable and responsible action to resolve his financial obligations. Applicant demonstrated appropriate management of his finances and showed 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
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Subparagraphs 1.a – 1.l:	For Applicant
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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