



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-07888
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel
For Applicant: Troy Nussbaum, Esquire, Applicant's Counsel

03/30/2018

Decision

HOGAN, Erin C., Administrative Judge:

On June 8, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006. The AG were revised on June 8, 2017. The new AGs were applied to Applicant's case. The outcome of Applicant's case would be the same under either AG.

On August 3, 2016, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 4, 2017. The case was assigned to another administrative judge on April 17, 2017, and transferred to me on May 22, 2017. The case was originally scheduled for November 15, 2017. A continuance was granted and the case was rescheduled for December 19, 2017. The hearing was held as scheduled. During the hearing, the Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6. Applicant testified and offered 23 exhibits which were admitted as Applicant Exhibits (AE) A – W.

The record was held open until January 9, 2018, to allow Applicant to submit additional documents. Applicant timely provided additional documents which were admitted as AE X - AA, without objection. The transcript (Tr.) was received on December 27, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 40-year-old employee of a Department of Defense contractor seeking to maintain a security clearance. He has worked for his current employer since October 2015. He has held a security clearance since 2002. He has a college degree. He is married and has two daughters, ages 16 and 3. (Tr. 19-20; Gov 1; Gov 2)

Applicant submitted a security clearance application on November 21, 2014. A subsequent background investigation revealed that he had the following delinquent debts: a mortgage account that was delinquent in the amount of \$14,175 (SOR ¶¶ 1.a: Gov 3 at 2; Gov 4 at 7; Gov 5 at 1; Gov 6 at 5, 13); thirteen delinquent student loan accounts placed for collection, an approximate total balance of \$80,684 (SOR ¶¶ 1.b – 1.l, 1.n, and 1.p: Gov 5 at 2-3); a \$2,991 charged-off jewelry store account (SOR ¶ 1.m: Gov 3 at 7; Gov 4 at 6; Gov 5 at 3; Gov 6 at 8); a \$1,471 delinquent cell phone account placed for collection (SOR ¶ 1.o: Gov 4 at 3; Gov 5 at 3); and a \$1,186 delinquent cell phone account placed for collection. (SOR ¶ 1.q: Gov 3 at 1; Gov 4 at 2; Gov 5 at 3)

Additional delinquent accounts include: a \$523 charged-off account (SOR ¶ 1.r: Gov 3 at 11; Gov 4 at 15; Gov 5 at 3); a \$428 charged-off account (SOR ¶ 1.s: Gov 3 at 11; Gov 4 at 14; Gov 5 at 3; Gov 6 at 5); a \$422 charged-off cell phone account (SOR ¶ 1.t: Gov 5 at 3; Gov 6 at 5, 15); a \$416 delinquent medical account (SOR ¶ 1.u: Gov 3 at 2; Gov 4 at 2; Gov 5 at 4); a \$72 delinquent medical account (SOR ¶ 1.v: Gov 3 at 2; Gov 4 at 2; Gov 5 at 4); a \$1,275 judgment with an unknown creditor filed against Applicant in 2012 (SOR ¶ 1.w: Gov 5 at 6); a \$764 judgment filed against Applicant in 2015 (SOR ¶ 1.x: Gov 4 at 2; Gov 5 at 6); and four traffic tickets owed to a city government in the respective amounts of \$250, \$250, \$105, and \$55 that were placed for collection. (SOR ¶¶ 1.y – 1.bb: Gov 6 at 16)

Applicant claims his financial problems were caused by his and his wife's periods of unemployment. He was unemployed from January 2014 to March 2014. His wife was unemployed June 2014 through September 2014. In addition in 2016, Applicant's income from the business he runs in his spare time was significantly reduced. The business used to bring in between \$1,500 to \$2,000 monthly. The business only earned \$573 in 2017. In order to reduce expenses, Applicant transferred his daughter from a private school to a public school. Applicant and his wife voluntarily returned a Range Rover that had a \$900 monthly car payment. Applicant also admits that they did not pay attention to their expenses. They were unable to make all their debt payments when they encountered periods of unemployment. When Applicant became employed again, he began paying off debts. (Tr. 21-27; Gov 1; Gov 2)

The status of the SOR debts are:

SOR ¶ 1.a: Past-due mortgage account: In 2015, when Applicant was laid off, he applied for a loan modification because they were having problems making their mortgage payments due to their loss of income. In January 2017, Applicant and his wife began to miss mortgage payments again. This was caused, in part, by legal expenses related to Applicant's security clearance hearing. Applicant and his wife worked with the mortgage company and initially established a repayment plan. In November 2017, they applied for another loan modification program. They are waiting for the mortgage company to process the loan modification. (Tr.32-41; AE A; AE P; AE R)

SOR ¶¶ 1.b – 1.i, 1.n, 1.p, delinquent student loan accounts: In 2014, Applicant and his wife applied to consolidate all of their student loans into one account. Once the consolidation was complete, they assumed all of their loans were consolidated together. Applicant discovered that his loans were not consolidated with his wife's loans when he met with the investigator conducting his background investigation. Applicant later discovered that his wife's loans were consolidated and his name was added to her loans, but his loans were not consolidated with his wife's loans. He was not making payments towards his loans because he believed that they were consolidated with his wife's student loans. Applicant is attempting to bring his student loans current. He will then apply to consolidate his loans. He is on a repayment schedule for his student loans, which he began in June 2017. He makes the payment by automatic deduction. (Tr. 41-53; AE B; AE Q; AE R)

SOR ¶ 1.m: \$2,991 charged-off jewelry store account: Applicant settled this debt for \$1,000 on December 15, 2017. The debt is satisfied. (Tr. 54-56; AE S)

SOR ¶ 1.o: \$1,471 cell phone account placed for collection: Applicant settled this account on November 29, 2017. The debt is satisfied. (Tr. 57-58; AE T)

SOR ¶ 1.r and SOR ¶ 1.s: \$523 and \$428 charged-off accounts owed to the same creditor: Applicant disputes these debts but entered into a settlement agreement for these debts on December 13, 2017. Under the agreement the debts were to be satisfied in early January 2018. After the settlement, Applicant intends to continue to dispute the accounts. (Tr. 60; AE E; AE V)

SOR ¶ 1.t: \$422 charged-off cell phone account: Applicant claims this is the same account as the debt alleged in SOR ¶ 1.o. He settled this account in November 2017. The debt is satisfied. (Tr. 57-58; AE T)

SOR ¶ 1.u: \$416 delinquent medical account: Applicant paid this debt on December 15, 2017. The debt is satisfied. (Tr. 62- 64; AE W)

SOR ¶ 1.v: \$72 medical account placed for collection: Applicant paid this debt on December 15, 2017. The debt is satisfied. (Tr.62-64; AE W)

SOR ¶ 1.w: \$1,275 judgment entered against Applicant in 2012: Applicant paid this debt. (Tr. 64; AE G)

SOR ¶ 1.x: \$764 judgment entered against Applicant in 2015: Applicant claims he disputed this debt and it has been deleted on the most recent credit report. (Tr. 65-66; AE H; Gov 3)

SOR ¶¶ 1.y – 1.bb, unpaid parking tickets placed for collection: Applicant provided sufficient proof that these tickets are paid. (Tr. 66-67; AE E; AE I; AE S)

Applicant and his wife are back working full-time positions. They currently earn \$7,333 in net income each month. Their monthly expenses total \$6,853. The expenses include \$500 to be deposited in savings each month. After expenses, they have a \$480 surplus each month. (AE X)

Applicant had issues with the first lawyer he retained. She advised him not to make payments towards his debts. One of the reasons Applicant could not pay the mortgage after the first loan modification is that Applicant was saving to pay his current attorney as well as saving to make payments towards his debts. Applicant continues to work on being more financially stable. His finances are improving. (Tr. 27-31, 68-70, 79-81, 92 101-103)

Whole-Person Factors

Mr. W., Applicant's former manager, supervised Applicant for three years. He describes Applicant as "always punctual, alert, and ready to dive into action." Applicant often volunteers for difficult projects. He was willing to work late and on weekends. Applicant was one of his best employees and he whole-heartedly vouches for his character. (AE O at 2) Ms. W., a former co-worker, states Applicant has good moral character. He is reliable, dedicated, and never leaves a job unfinished. He will be an asset to any company. (AE O at 5)

Ms. A., a personal friend of Applicant's has known Applicant and his family over the past 20 years. She describes Applicant as a cherished friend and loyal person. Applicant is thoughtful, reliable, and trustworthy. He has volunteered to coach basketball for disadvantaged youth and participated in other volunteer activities. (AE O at 1) Ms. B., another personal friend of Applicant's says similar favorable things about Applicant. She describes Applicant as "a man of great integrity and is dedicated to his family and work." (AE O at 3) Ms. C., another friend, describes Applicant as "a loyal, honest considerate, and supportive individual." (AE O at 4)

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 useful 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 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 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 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 the applicant may deliberately or inadvertently fail to protect or 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 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.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

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

Applicant encountered financial problems over the past few years. He was unable to meet his mortgage payments, became delinquent in his student loan payments, and incurred additional delinquent debts. The total amount of the delinquencies alleged in the SOR include \$80,684 in delinquent student loan debt, \$10,208 delinquent consumer debt and parking tickets and a delinquent mortgage account. AG ¶¶ 19(a), and 19(c) apply to Applicant's case.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving 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 pay debts under agreed terms. 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 not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. 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))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

(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;

(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 provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(b) applies because, although Applicant was financially over-extended, his financial problems were aggravated by his and his wife's separate periods of unemployment. Applicant's student loans became delinquent because of a misunderstanding about the consolidation of his and his wife's student loans. Once he learned that his student loans were delinquent, he entered into a repayment agreement. He is making payments and working towards bringing his student loans current. At the close of the record, he was waiting to see whether the loan modification on his mortgage was approved. If not approved, he intends to enter into a repayment agreement with the bank. Applicant is diligently working on resolving all the delinquent debts and is acting responsibly under the circumstances. Applicant's past financial issues do not cast doubt on his reliability, trustworthiness, or good judgment.

AG ¶ 20(d) applies because Applicant is making a good-faith effort to resolve his delinquent debts. He provided proof that he resolved the debts alleged in SOR ¶¶ 1.m, 1.o, 1.q, 1.t – 1.bb. He agreed to a settlement and payment agreement for the debts alleged in SOR ¶¶ 1.r – 1.s. Even though Applicant did not provide proof of payment towards the settlement, these debts are likely settled. He is making payments towards his student loans. He is awaiting approval of his mortgage loan modification. If the modification is not approved he will enter into a repayment agreement with the bank. Applicant put forth and is adhering to a good-faith effort to resolve his delinquent debts. Resolving these issues often takes time. Applicant is doing his best to improve his family's financial situation.

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(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 considered Applicant's long and favorable employment history with several defense contractors. I considered that Applicant has held a security clearance since 2002. I considered his and his wife's periods of unemployment and his support of two children. I note that Applicant and his wife transferred his daughter from a private school to a public school when they began to encounter financial problems. While Applicant encountered some financial problems over the past several years, he has taken steps to improve his financial situation. He has either paid or entered into repayment agreements with his creditors. Applicant resolved most of the debts and is working on his mortgage and student loan accounts. He demonstrated that he is committed to resolving his delinquent accounts and improving his financial situation. Security concerns under financial considerations are mitigated.

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.bb: For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge