



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



In the matter of:)
)
) ISCR Case No. 16-00599
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie Mendez, Esq., Deputy Chief Department Counsel,
For Applicant: *Pro se*

03/15/2018

Remand Decision

MURPHY, Braden M., Administrative Judge:

Applicant provided sufficient documentary evidence to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is granted.

Statement of the Case

On September 15, 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 (Exec. Or.) 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 effective within the DOD for SORs issued after September 1, 2006.

On December 10, 2016, the Director of National Intelligence issued new National Security Adjudicative Guidelines (AG). The new AGs are effective June 8, 2017, for all

decisions after that date, and they supersede the AGs that Applicant received with the SOR.¹ Any changes resulting from the implementation of the new AGs did not affect my decision in this case.

Applicant answered the SOR on November 29, 2016, and elected a decision based on the written record in lieu of a hearing. On January 18, 2017, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 5. Applicant received the FORM on January 26, 2017. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. The Defense Office of Hearings and Appeals (DOHA) received Applicant's signed but undated response on or about February 7, 2017. He did not object to the Government's evidence. He submitted a narrative response and three sets of documents, which are marked as Applicant's Exhibits (AE) A through AE D and admitted without objection.² The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 5 are admitted into evidence without objection.

The case was assigned to me on October 1, 2017. On November 6, 2017, I reopened the record until November 20, 2017, to allow Applicant the opportunity to submit additional documentation. Applicant responded the next day, and indicated that he would be submitting additional documents. I did not receive any further materials from Applicant before I closed the record closed on November 20, 2017.³

On November 28, 2017, I issued a decision denying Applicant eligibility for access to classified information. Applicant appealed, and included attachments that he purportedly sent by e-mail on November 20, 2017, in response to my order. On March 7, 2018, the DOHA Appeal Board remanded this case to me "to consider the documents attached to Applicant's brief and issue a new Decision in accordance with the Directive."⁴

On March 13, 2018, I e-mailed the parties and requested that Department Counsel provide a copy of Applicant's November 20, 2017 e-mail, and the attachments. She did so, and Applicant confirmed what he had submitted. The e-mail and the attachments are marked as AE E through AE L, and admitted without objection.⁵ The record closed on March 14, 2018.

¹ The new AGs are available on the DOHA website at <http://ogc.osd.mil/doha/DIRECTIVE%202017.pdf>.

² With his FORM Response, Applicant also included a copy of the SOR and his answer. They are not marked as exhibits, since they are duplicative of the pleadings.

³ Hearing Exhibit I.

⁴ ISCR Case No. 16-00599 at 2 (App. Bd. Mar. 7, 2018)

⁵ Hearing Exhibit II. AE E is Applicant's November 20, 2017 e-mail. He also submitted two recommendation letters (AE F); excerpts from a credit report (AE G); documentation of two debt payments to a local hospital (AE H); documentation of an additional \$79 payment (AE I); a request for investigation submitted to a credit bureau (AE J) seven pages of documentation of other debt payments made in November 2017 (AE K) and

Findings of Fact

Applicant admitted SOR ¶¶ 1.c, 1.e through 1.g, 1.j, 1.m through 1.o, and 1.q through 1.s. He admitted both SOR ¶¶ 1.h and 1.i, but asserted that one was a duplicate. He denied SOR ¶¶ 1.a, 1.b, 1.d, 1.k, 1.l, 1.p, 1.t and 1.u. He provided brief narrative explanations for each debt, but no documents. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 54 years old. He was married from 1990 to 1991, and again from 1994 to 2007. He has no children. After graduating from high school, Applicant served honorably in the United States Marine Corps from 1981 to 1990, and in the United States Army Reserve from 1991 to 2012. His Army Reserve service included activation and deployment to Iraq in support of Operation Iraqi Freedom from about August 2004 to November 2005. (Item 2)

Applicant was unemployed for about three months after returning from the deployment, until February 2006. Since then, he has largely worked as a systems administrator for various employers. He worked for one employer from February 2006 to about September 2008. After his second divorce, he moved to another state. He was then self-employed from about October 2008 to February 2010. Since then, he has worked in the defense industry. He has worked for his current employer since February 2012. He was most recently granted a security clearance in 2005. (Item 2)

In October 2015, in connection with his employment, Applicant submitted a security clearance application (SCA). He disclosed numerous delinquent debts. He also indicated that he was in a monthly repayment plan with the U.S. Internal Revenue Service (IRS) for past-due federal income taxes. He indicated that his debts were due to limited income after he moved to a new state following his divorce. (Item 2 at 35-43) In his November 2015 background interview, Applicant also noted that he subsequently incurred hospital bills after he was diagnosed with cancer. (Item 5 at 11) Applicant's credit reports, from November 2015 and January 2017, detail the 21 delinquent debts alleged in the SOR, which total about \$20,000. (Items 3, 4)

Debts Denied

SOR ¶ 1.a is a \$3,624 judgment filed against Applicant in 2011. He disclosed the judgment debt on his SCA, and indicated that the account had been paid in full. He indicated that the judgment was issued by the circuit court in County H, and that the creditor was a collection agency. (Item 2 at 35) In SOR ¶ 1.a, the creditor is named as "Creditor H" (the same name as "County H"). The government's credit reports, however, list the creditor for this debt as "Bank C." (Items 1, 3, 4) Applicant denied the debt in his

documentation from the Internal Revenue Service. (AE L) The credit report (AE G) is undated but Applicant noted in his e-mail that it is "recent." I therefore consider it to be dated in about November 2017.

answer, asserting that it had been paid. In his FORM Response (AE A), he indicated that he had not received proof from the creditor that the account is resolved, but he asserted that a current credit report would show the judgment as satisfied.

In his November 2017 materials, Applicant provided a credit report showing two accounts, now in collection, to a local hospital. One debt, originally for \$3,622, had a past-due balance of \$195. I find that this debt is SOR ¶ 1.a. Another debt, originally for \$3,962, had a past-due balance of \$612. (AE G) Both of these debts have now been paid. (AE H)

Applicant denied SOR ¶ 1.b, a \$6,433 debt to a bank. The account is listed on Item 3 as being in collection. Applicant has been paying \$200 a month on the account, and provided documentation that as of February 2017, the balance due was \$3,233. (AE A, AE B) With his November 2017 materials, Applicant provided documentation of a recent \$200 payment and showed that the balance due was down to \$1,433. (AE K)

SOR ¶ 1.d is a \$1,004 debt to a bank. The account is listed on Item 3 as a debt in collection. Applicant denied the debt, asserting that he had paid \$100 a month to resolve the debt in full, and that a current credit report would verify this. (AE A) The debt is not reflected on the credit report he provided in November 2017.

Applicant denied SOR ¶¶ 1.k (\$225), 1.l (\$216), 1.p (\$91), 1.t (\$63), and 1.u (\$46), all medical debts owed to the same collection agency. Applicant provided documentation showing that they have been paid. (AE C)

Debts Admitted

SOR ¶ 1.h (\$349) and ¶ 1.i (\$348) are debts to the same phone company but different collection agencies. Both are found on his November 2015 credit report, and the amounts are only one dollar apart. (Item 3) Applicant admitted both allegations but stated he only had one account with the company. (AE A) I find that the two debts are the same, and resolve SOR ¶ 1.i for Applicant as a duplicate.⁶

Applicant admitted the remaining debts: SOR ¶¶ 1.c (\$4,933, to a financial services institution); medical debts ¶¶ 1.e (\$850), 1.f (\$611), 1.g (\$389), 1.j (\$317), 1.m (\$195), 1.n (\$195), 1.q (\$79), 1.r (\$71), 1.s (\$65), as well as ¶ 1.o (\$115, to a retailer). He provided documentation in November 2017 that SOR ¶¶ 1.e, 1.g, 1.j, 1.m, 1.q, 1.r, and 1.s had all been paid. These payments total about \$2,133.

In his FORM Response, Applicant also noted that he remained current on his repayment plan with the IRS. As of February 2017, he was paying \$300 a month, and owed \$14,853 in past-due federal income tax debt. (AE D) With his November 2017

⁶ When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice).

materials, Applicant provided updated documentation from the IRS establishing that his \$300 monthly payments have continued and that the balance due was down to \$12,592. (AE L)⁷

In his FORM Response (AE A), Applicant asserted that his financial circumstances had changed since his background investigation began in October 2015. He indicated that he had learned he could take out a loan against the money in his 401(k) pension account. He asserted that this would allow him to pay off the remaining past-due debt on his credit report, which he estimated at about \$10,000, as well as his overdue taxes. Applicant also stated that “I cannot take out a loan against [the 401(k)] if I may lose my clearance, as that would end my employment.” (AE A)

Applicant’s two professional references have known and worked with him for over five years. He is regarded as an excellent employee and role model. He is efficient and dedicated. He is well-regarded as a person of high integrity, honesty and dependability. He has persevered through his major medical issues, and consistently worked to ensure the mission was nonetheless completed. (AE F)

Policies

It is well established that no one has a right to a security clearance.⁸ 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.”⁹

The adjudicative 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 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 national security eligibility will be resolved in favor of the 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, an “applicant is

⁷ Applicant’s federal tax debt is not alleged in the SOR as disqualifying conduct. However, I may consider it in evaluating evidence of mitigation as well as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2016). I therefore consider it accordingly.

⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”).

⁹ 484 U.S. at 531.

responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 an 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

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 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹⁰

¹⁰ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns:

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

These disqualifying conditions are applicable, given the record evidence of Applicant's delinquent debts.

Applicant denied SOR ¶ 1.a, asserting that the debt had been paid. He disclosed it on his SCA, noting the specific dollar amount allegedly owed, and the fact that it was a judgment. The account is also listed on both credit reports in the record. Although the SOR named the incorrect creditor (the court where the judgment was issued, and not the creditor owed), I find that the Government provided sufficient evidence to establish SOR ¶ 1.a, given Applicant's statements about the debt.

The financial considerations guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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;
- (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.

Applicant's financial problems are due in part to the limited income he earned after he moved to a new state following his divorce in 2007. He had some difficulty establishing stable employment after he moved to a new state in 2008. However, he has been gainfully employed in the defense industry since 2010.

At some point thereafter, Applicant was diagnosed with cancer. Several of the SOR debts are medical debts. Some of them have been paid. Some of them have not, but even

so, I attribute these debts to circumstances beyond his control, and resolve them in his favor under AG ¶ 20(b). This mitigates medical debts ¶¶ 1.e, 1.g, 1.j, 1.k, 1.l, and 1.p through 1.u (which have also been paid) as well as SOR ¶¶ 1.f, and 1.n.

In November 2017, Applicant provided documentation establishing that SOR ¶ 1.a had been paid. He also provided similar documentation that another large debt to the same creditor (not alleged) had also been paid. The debts were also medical debts.

For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. Considering the evidence as a whole, I conclude that Applicant provided sufficient evidence to establish that he acted responsibly under the circumstances in handling his debts. AG ¶ 20(b) therefore applies.

AG ¶ 20(e) applies to SOR ¶ 1.i, a duplicate. It also applies to the debts Applicant denied but also established that he had paid.

AG ¶ 20(a) does not apply, since Applicant's debts are ongoing, and not fully resolved.¹¹ While not all of Applicant's debts have been paid (whether alleged or not), this is not required to establish mitigation. 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.¹²

I conclude that Applicant provided sufficient documented evidence that he has initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts. He has established a track record of steady payments towards his creditors, including the non-alleged tax debt. AG ¶ 20(d) applies.

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

¹¹ Applicant did not establish that the debts at SOR ¶¶ 1.c, 1.d, 1.h or 1.o have been or are being paid. However, these debts total only about \$6,400.

¹² ISCR Case No. 07-06482 at 3 (App. Bd., May 21, 2008).

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(a), 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. Applicant established that his debts occurred largely due to circumstances beyond his control. He provided sufficient documentary information that he is resolving his debts in a good-faith, responsible manner. 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.u: 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 interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge