



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



In the matter of:)
)
) ISCR Case No. 16-03104
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

10/23/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant provided sufficient documented evidence that he made a good-faith effort to resolve his delinquent debts, which occurred after a job loss and a reduction in income. He mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is granted.

Statement of the Case

On December 6, 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.

Applicant answered the SOR on December 21, 2016, and elected to have his case decided on the written record in lieu of a hearing. He submitted one document with his answer. It is marked as Applicant's Exhibit (AE) A and admitted into evidence without objection. On January 19, 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 30, 2017. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit a response, and did not object to the Government's evidence. The SOR and the answer (Items 1 & 2) are the pleadings in the case. Items 3, 4 and 5 are admitted into evidence without objection. The case was assigned to me on October 1, 2017.

When Applicant answered the SOR, he indicated that several of the SOR debts had been paid, and provided contact and account information for the creditors. I e-mailed the parties on October 5, 2017, and reopened the record to allow Applicant the opportunity to document and update his answers.¹ On October 11, 2017, Applicant submitted an e-mail response (AE B) and 10 documents, which are marked as AE C through AE L and admitted without objection.

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, including this one, and they supersede the AGs that Applicant received with the SOR.²

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.i, with explanations. 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 45 years old. He graduated from high school in 1990. He and his wife have been married since 2005, and they have a nine-year-old daughter. From 2004 to December 2007, Applicant worked as a manager, until his employer went out of business. He was then unemployed for about three months before finding part-time work as a self-employed network engineer. He worked in that position from April 2008 to December 2011, when the location where he was working closed. In 2012, he worked in fundraising for a local school. He was unemployed from November 2012 to November 2013. (Item 3)

Since November 2013, Applicant has worked for his current employer, in the defense industry. In connection with his employment, he submitted a security clearance application (SCA) in January 2016. He disclosed several delinquent debts, including credit cards and a repossessed car. He has never held a clearance. (Item 3; AE L)

¹ Hearing Exhibit (HE) I.

² The new AGs are available on the DOHA website at <http://ogc.osd.mil/doha/DIRECTIVE%202017.pdf>.

In the SOR, the Government alleged nine delinquent debts, totaling about \$14,358. They are listed on Applicant's February 2016 credit report. In his April 2016 background interview and in his answer, Applicant indicated that he fell behind on his debts after he lost his job in 2008, and was only able to find part time work, resulting in a reduction in income. Applicant indicated that since he has been working full time in his current job, he has been able to pay off most of his debts. (Answer, Items 4, 5; AE B)

SOR ¶ 1.a (\$5,024) is a judgment filed against Applicant in 2011, relating to credit card debt. Applicant disclosed the account on his SCA. Applicant indicated that he is in contact with the creditor, and is negotiating to settle the account, though he disputes the amount owed. He indicates that he has the means to pay the judgment once an agreement is made. (AE B, AE C)

SOR ¶ 1.b (\$3,619) is a judgment filed against Applicant in 2009, relating to credit card debt. He disclosed the debt on his SCA. Applicant provided documentation with his answer that he had settled the account and begun making payments. (AE A) More recently, he provided documentation that in June 2017, the account was paid in full and the judgment satisfied. (AE C)

SOR ¶ 1.c (\$4,648) is a charged-off account relating to a repossessed vehicle. Applicant disclosed the debt on his SCA. He provided documentation that he settled the account. (AE D)

SOR ¶ 1.d is an auto account listed as having been charged off in 2009, and transferred to another lender. No amount is listed (or alleged) as delinquent. (Item 5 at 4). Though Applicant admitted ¶ 1.d, he noted that the debt had been paid in full, the title released, and the vehicle sold. With no amount alleged as delinquent (or owed), the account is resolved.

SOR ¶ 1.e (\$396) and 1.f (\$315) are past-due medical debts. Both were paid in January 2017 (AE E, AE F) SOR ¶¶ 1.g (\$215), 1.h (\$99 phone bill) and 1.i (\$42 cable bill) were also paid in January 2017. (AE G, AE H, AE I)

Applicant provided documentation indicating that he earned about \$37,000 in 2015, and about \$51,000 in 2016 in taxable income. His current taxable income appears slightly higher. (AE K) He and his wife have about \$70,000 in documented assets. (AE J) They live modestly, and rent free, in a basement apartment in his father's house. (Item 3)

Policies

As the Supreme Court noted in *Department of the Navy v. Egan*, it is well established that no one has a right to a security clearance.³ The *Egan* court also held that

³ 484 U.S. 518, 528 (1988).

“the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”⁴

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 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. . . .

⁴ 484 U.S. at 531.

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.⁵

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable: ¶¶ 19 (a) inability to satisfy debts; and 19 (c) a history of not meeting financial obligations.

Applicant accrued multiple financial delinquencies after he lost his full-time job in 2008. He then worked part-time, and was unemployed again for all of 2013. The above disqualifying conditions apply. Applicant admitted SOR ¶ 1.d, but no delinquency was alleged, so that account is not proven as an ongoing 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; and

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

Applicant's debts were due to a 2008 job loss and a resulting reduction in income. A later job loss, in 2013, further impacted his finances. The first prong of AG ¶ 20(b) applies. For full application of AG ¶ 20(b), Applicant must establish that he acted responsibly under the circumstances. Since regaining full-time employment with an increase in salary, Applicant has resolved almost all of his debts, and intends to continue doing so. Applicant has acted responsibly in resolving his debts. AG ¶ 20(b) fully applies.

Likewise, he established a significant track record of steady payments or other evidence of financial stability to show that he "initiated and is adhering to a good-faith

⁵ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

effort to repay overdue creditors or otherwise resolve debts” as required under AG ¶ 20(d).

Applicant has sufficient income and assets to show that his financial issues are unlikely to recur. He acted responsibly in resolving them, and established that his debts no longer cast doubt on his current reliability, trustworthiness and good judgment. AG ¶ 20(a) 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 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 provided sufficient documented information that he has resolved 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.i:

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 access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge