



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 16-03547
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas T. Temple, Esquire, Department Counsel
For Applicant: *Pro se*

09/11/2018

Decision

HOGAN, Erin C., Administrative Judge:

On December 21, 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. Security Executive Agent Directive 4 (SEAD 4), approved on December 10, 2016, amended the AG effective on June 8, 2017. I reviewed both AG. The outcome of this case would have remained the same under either set of guidelines.

On January 23, 2017, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 20, 2017. The case was assigned to another administrative judge on September 26, 2017. A hearing was originally scheduled on April 5, 2017. Applicant did not appear at the hearing. It was decided that Applicant was not provided adequate notice and the case was transferred to me on April 19, 2018. On April 24, 2018, a Notice of Hearing was issued scheduling the hearing for May 16, 2018. The hearing was held as scheduled. During the hearing, the Government offered five exhibits which were

admitted as Government Exhibits (Gov) 1 – 5. Applicant testified and offered one exhibit which was admitted as AE A. The record was held open until June 15, 2018, to allow him to submit additional documents. He timely submitted a set of documents which was admitted as AE B. The documents included a list of the SOR debts indicating the amount paid or settled with a reference number. On July 20, 2018, I reopened the record, over the Government's objections, to allow Applicant to present receipts regarding the debts he listed as paid and settled. On August 10, 2018, Applicant submitted an additional document, which was admitted as AE C. The transcript (Tr.) was received on June 5, 2018. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is an employee of a DoD contractor seeking to maintain a security clearance. He has worked for his current employer since July 2017. He served on active duty in the United States Army from 1982 to 2014 as a U.S. Army Ranger, Special Operations. He retired honorably as a sergeant major. His career field involved regular deployments to include extended deployments to Afghanistan in 2002, 2009, and 2010. He has held a security clearance in the past without incident. He is a high school graduate and has some college credit. He is divorced, but is currently engaged. He has three children from his previous marriage, two sons and a daughter ages 30, 28, and 18. His fiancée has three children, ages 23, 22 and 21. (Tr. 18-21, 57-58, 62-65; Gov 1)

On December 8, 2015, Applicant submitted a security clearance application as part of a periodic reinvestigation. (Gov 1) A subsequent security clearance background investigation resulted in the following SOR allegations: a \$7,834 credit card account placed for collection in 2015 (SOR ¶ 1.a: Gov 3 at 2; Gov 4 at 2; Gov 5 at 11); a \$3,158 credit card account that was charged off in March 2013 (SOR ¶ 1.b: Gov 3 at 3; Gov 4 at 2; Gov 5 at 3); a \$1,840 credit card account that was charged off in April 2014 (SOR ¶ 1.c: Gov 3 at 4; Gov 4 at 2; Gov 5 at 3); a \$681 department store credit card account that was charged off in May 2012 (SOR ¶ 1.d: Gov 3 at 3; Gov 4 at 2; Gov 5 at 3); a \$560 credit card account placed for collection in September 2013 (SOR ¶ 1.e: Gov 3 at 2; Gov 4 at 2; Gov 5 at 11); a \$426 account that was placed for collection (SOR ¶ 1.f: Gov 3 at 2; Gov 4 at 2; Gov 5 at 11); a \$305 cable-television account that was placed for collection (SOR ¶ 1.g: Gov 3 at 1; Gov 4 at 2); and a \$416 account that was past due in May 2012 (SOR ¶ 1.h: Gov 5 at 3).

Applicant's financial problems began after he and his wife divorced in 2011. He deployed a lot while on active duty and his wife handled the finances. He discovered several of the delinquent debts later. His divorce was contentious. When he retired in 2014, he was unemployed for a period of seven months (October 2014 to April 2015). He was able to pay his day-to-day expenses from his monthly \$1,500 military retirement check. His ex-spouse received the other 50% of his retirement check. He was hired by a defense contractor in April 2015. However, his net monthly income was \$1,000 a month after taxes, and approximately \$1,100 in alimony and child support was deducted from his pay check. This was insufficient to pay all of his bills. He was hired by his current

employer in July 2017. His monthly take-home pay increased to \$4,500, (Tr. 21-22, 33-38)

In early 2017, Applicant initially consulted a law firm about resolving his delinquent debts. He terminated their representation in the fall 2017. They advised Applicant to save money and pay off all of the delinquent debts at once. Applicant was prepared to begin resolving his delinquent accounts when his mother became seriously ill in December 2017. Her illness lasted until April 2018. Applicant consulted Consumer Credit Counseling Service in April 2018. They drew up a payment plan for him, but he decided to pay off the debts on his own. He also consulted Army Community Services in March 2018. (Tr. 39-53)

During the hearing, Applicant testified that he saved up approximately \$17,000 and he was prepared to resolve his debts. After the hearing, he provided proof that he paid off all of the debts alleged in the SOR with exception of SOR ¶ 1.h which is not listed on the most recent credit report in the file.

The status of the SOR Debts are:

SOR ¶ 1.a: \$7,834 credit card account placed for collection: Applicant settled the account on June 12, 2018, in the amount of \$4,525.38. Debt is resolved. (AE C at 5, 9)

SOR ¶ 1.b: \$3,158 charged-off credit card account: Applicant settled the account on June 12, 2018, in the amount of \$1,737.14. Debt is resolved. (AE C at 5-7)

SOR ¶ 1.c: \$1,840 charged-off credit card account: Applicant settled the account on June 12, 2018, in the amount of \$1,288.18. Debt is resolved. (AE C at 5, 9)

SOR ¶ 1.d: \$681 charged-off department store credit card account: Applicant paid the full balance on the debt on June 13, 2018. Debt is resolved. (AE C at 5, 10)

SOR ¶ 1.e: \$560 collection account: Applicant settled the account on June 12, 2018, for \$364.26. He provided a bank statement showing a payment of \$252.18 was made. Debt is resolved or in the process of being resolved. (AE C at 5, 9)

SOR ¶ 1.f: \$426 collection account: Applicant paid the account on June 11, 2018. AE C at 5, 8)

SOR ¶ 1.g: \$305 cable-television account placed for collection: Applicant paid the account on June 9, 2018. (AE C at 5, 8)

SOR ¶ 1.h: \$416 debt owed to a bank: No payments were made on this account. The account is no longer on Applicant's recent credit reports. (AE C; Gov 3; Gov 4)

Applicant also provided proof that he paid off several student loan accounts in full. (AE C at 11-14). As of June 13, 2018, His total monthly income was \$5,025.24

(\$4,085.70 from his employer; \$939.54 military retirement). (AE A) In May 2018, Applicant received a \$17,500 pay increase. He previously earned \$95,000 annually. As of May 15, 2018, he currently earns \$112,200 annually. He also recently inherited \$20,000 from a relative. (AE B, Tab C)

Whole-Person Factors

Applicant provided 50 letters of recommendation from friends, co-workers, and former co-workers attesting to his reliability and trustworthiness. (AE B, Tabs D – G) Some of the more notable letters are summarized below.

A United States Senator wrote a letter on Applicant's behalf. The Senator has known Applicant over 25 years. She met Applicant when he was serving in the same regiment as her husband. The Senator describes Applicant as a "stalwart leader, soldier, and friend." The Senator states "[Applicant] is a most-loyal patriot for our great United States of America and has my strong endorsement for the approval of his national security clearance." (AE B, Tab E)

The president of Applicant's current employer states that he has known Applicant since 1994 when they both served on active duty in the United States Army. Applicant has worked for the company since 2017. He has known Applicant to a "forthright, and committed noncommissioned officer and employee." Applicant has never shown any behavior that made him question Applicant's trustworthiness, ethics and commitment to the United States. He states Applicant is not a security risk and should be granted his top secret security clearance. (AE B, Tab D)

General V, the Commander, United States Central Command, has known Applicant for over 30 years. Applicant served under his command and during multiple deployments. Applicant served in the U.S. Army for 32 years with utmost distinction, retiring as a sergeant major – the highest enlisted rank in the U.S. Army. General V. attests that Applicant "exudes the moral and ethical traits needed to possess a national security clearance." He is aware Applicant experienced financial problems since his divorce and is confident Applicant has taken steps to resolve his financial issues. Applicant has his strongest endorsement for a security clearance. (AE B, Tab E)

Applicant earned many awards and decorations during his service in the United States Army including The Legion of Merit; Meritorious Service Medal (4th Award); Army Commendation Medal (2nd Award); Army Achievement Medal (4th Award); Army Good Conduct Medal (8th Award); Afghanistan Campaign Medal with two Campaign Stars; National Defense Service Medal (2nd Award); Global War on Terrorism Service Medal; Kosovo Campaign Medal; Armed Forces Expeditionary Medal with Arrowhead Device; and the Military Outstanding Volunteer Service Medal, NATO Medal (2nd Award). (AE B, Tab B)

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 AG 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).

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 since his divorce in 2011. The SOR alleged eight delinquent debts, an approximate total of \$15,220. 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:

(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;

(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 or is under control; and

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

AG ¶ 20(a) applies. Applicant's financial problems were the result of his divorce and his unemployment and under-employment after he retired from the U.S. Army. Applicant's financial situation is now more secure and his past financial issues are unlikely to recur. His efforts to resolve his delinquent debts once he was in a position to do so indicates that Applicant is reliable, trustworthy and has good judgment.

AG ¶ 20(b) applies because circumstances beyond Applicant's control adversely affected his finances to include a divorce, a seven-month period of unemployment, and several years of under-employment. When he retired from the military, Applicant was unemployed for seven months. He was under-employed for several years until he found a well-paying job in 2017. During his period of unemployment, he focused on paying his child support and his daily living expenses. Upon finding a well-paying position, it took Applicant some time to save some money so that he could begin to resolve his delinquent accounts. In December 2017, Applicant experienced an additional setback when his mother became seriously ill. Once her health stabilized, Applicant continued with his plan to resolve his delinquent debts. At the time of the hearing, he saved \$17,000 to pay off his delinquent debts and followed through with payment after the hearing. Applicant acted responsibly under the circumstances.

AG ¶ 20(c) applies. Applicant pursued several options when dealing with resolving his financial situation. He retained a law firm and consulted with Consumer

Credit Counseling. He ultimately decided that saving a significant amount of money and settling his debts on his own was the best approach. He provided proof that he resolved most of the debts alleged in the SOR. The remaining unresolved debt (SOR ¶ 1.h) is no longer listed on his credit report. Applicant's current financial situation is under control.

AG ¶ 20(d) applies. Once he earned sufficient income to resolve his delinquent debts, Applicant assessed the situation and made a good-faith effort to resolve his delinquent accounts. He saved some money so he was able to settle all of his debts with the exception of a minor debt that is no longer listed on his credit report.

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 32 years of honorable service in the United States Army. I considered the favorable reference letters from 50 of his colleagues, friends, and superiors. I considered Applicant's favorable service working a federal contractor.

Applicant's financial problems resulted from his divorce, as well as his unemployment and under-employment for several years after he retired from active duty military service. Once Applicant found a job with sufficient income, he took steps towards resolving his delinquent accounts. He attended financial counseling and pursued several options before deciding to save a sum of money so he was able to settle or pay his debts. After the hearing, he provided proof that he followed through with resolving most of his accounts. The remaining unresolved debt is minimal. His financial situation is more stable. 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.h: 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