



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-04037

Appearances

For Government: Andre Gregorian, Esquire, Department Counsel
For Applicant: *Pro so*

05/09/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On February 8, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).¹ In a May 13, 2017, response, Applicant admitted all allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on April 19, 2017. The matter was scheduled on May 24, 2017, for a July 25, 2017, hearing. The hearing was convened as scheduled.

The Government offered five documents, which were accepted into the record without objection as Government exhibits (Exs.) 1-5. Applicant gave testimony and offered 11 documents, accepted without objection as Exs. A-K. The record was left

¹ The action was taken under Executive Order 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 within the DOD on or after September 1, 2006. Since that time, the AG have been amended. The recently amended AG are in effect for any adjudication on or after June 8, 2017.

open through August 15, 2017, to provide the parties with sufficient time to submit additional materials. In the interim, a transcript (Tr.) of the proceedings was received on August 1, 2017. On August 2, 2017, Applicant submitted five packets of additional material, which were accepted without objection as Exs. L-P. With no additional materials forthcoming, the record was closed on August 15, 2017. After review of the record as a whole, I find Applicant mitigated finance-related security concerns.

Findings of Fact

Applicant is a 46-year-old male who has worked for the same defense contractor for almost three years. He averages an annual income of \$145,000. (Tr. 14, 63-64) Applicant served as a reservist in the United States Navy for about 15 years. (Tr. 13) He has earned a bachelor's degree. He has never been married. Applicant has three children, aged 11, 8, and 7, with a former girlfriend. He timely pays \$145 per week in support for each child. Applicant has never received financial counseling.

Before starting his current work, Applicant was self-employed from 2003 to 2014, running an information technology (IT) company. When the business was thriving, he was earning about \$150,000 a year. Business, however, began to slow down around 2012, when he only earned approximately \$52,000. At that point, he began to supplement his income with part-time, commission-based work, a position he maintained from about December 2011 through the summer of 2013. (Tr. 15) In 2013, when his IT business barely earned about \$12,000, Applicant's relationship with his children's mother ended. This led to his paying child support for his three offspring. (Tr. 71) He ultimately closed his company in 2014 due to lack of business, having barely generated about \$18,000. (Tr. 15-16) His business downturn and child support helped contribute to his financial woes. (Tr. 14) In need of an income, he took a \$70,000 a year job working as a security assessor for about 10 months. (Tr. 24)

Once employed as a security assessor and empowered with a salary, Applicant began to deal with his growing financial issues. While the salary was considerably lower than it had been in better days, he began to consolidate his resources and liquidate assets to satisfy his obligations. (Tr. 24) To that end, he worked with his creditors.

At issue in the SOR are the following debts:

1.a – Mortgage loan default and foreclosure, circa September 2016² – *No deficiency owed*. Before his business downturn, Applicant had never had problems keeping current on this or any other mortgage. That changed when his business turned sour. For about two years, Applicant persisted in trying to get a home loan modification on this second home, originally purchased to provide a house for an ill relative. (Tr. 25-27, 30-31) At

² Tr. 30.

issue was an outstanding principal balance of \$93,826. (Tr. 29) The house eventually was sold. No deficiency was owed, however, after the foreclosure.³ (Tr. 30)

1.b–1.c - Charged-off business credit card balances (\$16,291 and \$12,078, respectively) – *Unpaid*. The last activity reflected on these accounts coincides with Applicant's business downturn in around 2012-2013. (Tr. 31) At one point, Applicant tried to have the debts incorporated into a debt consolidation plan, but his efforts were unsuccessful. (Tr. 32; Ex. C) He had also hoped to satisfy the debts in anticipation of some income that was never realized. (Tr. 31-32) The debts remain unpaid, but he is prepared to address them in the immediate future. (Tr. 32, 54)

1.d – Charged-off automobile loan (\$11,687) – *Unpaid*. This loan was for a car Applicant purchased for a down on his luck cousin who was in need of transportation to work. (Tr. 33) In 2010, the vehicle was towed when the cousin had some trouble in heavy, out of town traffic. (Tr. 34) Complications arose regarding what entity had towed and impounded the car, and where it was being kept. These issues remained unresolved until 2013. (Tr. 34, 44-49; Exs. J-K) The last activity on this account was in 2013, around the time of Applicant's business' downturn. After threats of lawsuits by all parties, Applicant obtained the vehicle. It is currently parked, unused, and unsellable because both the names of the bank and Applicant remain on the title, and the parties do not agree on what to do with the vehicle.⁴ The matter was last in the hands of a collection agent. (Tr. 42) Applicant has been willing to settle the matter. In 2016, Applicant reported the events to the Better Business Bureau (BBB).

1.e – Collection account (\$1,929) – *Paid*. Applicant satisfied this debt previously. At this point, he has a refund owed. (Tr. 55; Ex. D)

1.f – Telecommunications collection account (\$184) – *Paid*. (Tr. 20; Ex. E)

1.g – Telecommunications collection account (\$928) – *Paid*. Applicant called the creditor's collection agent and was told the debt had been returned to the telecommunications provider in 2015. Applicant provided a copy of a bill on this account that reflects the account was current as of April 2017. (Ex. N at 2-5)

1.h - Telecommunications collection account (\$182) – *Paid*. Applicant provided documentary evidence reflecting he has no accounts with negative balances generated by this provider. (Ex. M; Ex. O at 3-4)

1.i – Medical collection account (\$62) – *Paid*. Applicant provided a letter from this medical provider reflecting that the \$62 balance at issue was paid in July 2017. (Ex. P)

³ Applicant's primary home, not at issue in the SOR, was pending review for a loan modification as of approximately 10 weeks before the hearing. (Ex. L) He hopes to start devising and negotiating a repayment plan for his remaining debts, discussed below, once this mortgage has been modified.

⁴ The bank continues to be on the title because the loan has yet to be fully satisfied. (Tr. 37, 39)

Other than the three debts still owed above, Applicant is on his “feet with [his] current debts.” (Tr. 56) He noted that he is not accruing additional interest on any of his debts, nor acquiring more debt. (Tr. 57) Therefore, he is momentarily putting off addressing any remaining debts in order to rebuild his credit and replenish his savings as a predicate to seeking a debt repayment plan. (Tr. 57) He believes this is a superior strategy to simply taking out a loan to satisfy his remaining debt in one action under poor terms. His strategy has been to prioritize his debts by first paying those balances accruing interest and fees, and postponing those which can stay on hold without growing for when he is in a better financial condition. (Tr. 57-58)

Applicant has about \$120,000 in a retirement account. After all expenses are paid each month, he has a net monthly remainder of approximately \$900-\$1,300. In the past three years, his largest purchase was a used vehicle. He is current on his home mortgage. (Tr. 69) He is current on all of his state and federal tax obligations. Overall, Applicant is doing well at work and living simply at home.

Remaining at issue are the two business-related credit cards at 1.b-1.c and the auto loan at 1.d, which Applicant plans on including in a consolidation or repayment plan.⁵ It was his goal to have such a plan in place by the end of 2017. (Tr. 65-66) He has sufficient money and motivation to devise a reasonable plan for that goal. Applicant describes himself as being “on the path of recovery.” (Tr. 72)

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 are used 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 the AG, 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 in making a decision.

The protection of the national security is the paramount consideration. Any 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 record evidence. Under the Directive, the Government must present evidence to establish controverted facts

⁵ Applicant ceased making progress on these delinquent debts when they became delinquent in 2013. (Tr. 69-70) In contrast, Applicant has addressed the foreclosure at SOR allegation 1.a, on which he owes no debt, and paid the collection accounts at 1.e-1.i.

alleged in the SOR. An applicant is responsible for presenting adequate evidence to rebut, explain, extenuate, or mitigate admitted facts or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security decision.

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Decisions are in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.

Here, the Government introduced credible evidence indicating that Applicant had acquired multiple delinquent debts and had a second home foreclosed upon after he defaulted on his mortgage. This is sufficient to raise financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so; and

AG ¶ 19(c): a history of not meeting financial obligations.

Under these facts, the following conditions could potentially mitigate the finance-related security concerns posed here:

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;

AG ¶ 20(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

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial woes were caused, at least in part, by both the failure of his business and the end of his relationship with his children's mother. The debts at issue arose during that time period (2012-2014). To help make ends meet, he took a part-time job to help generate income. He eventually abandoned his failing business and sought stable employment. While it was a lower paying job than he had earned in better days, it was enough to help him regain some control over his finances. Given these facts, AG ¶ 20(b) applies.

Although Applicant actively fought to get a home loan modification before his second property was lost to foreclosure, his efforts were ineffective. Luckily, the foreclosure sale fully satisfied the debt. Moreover, he has paid five of the eight delinquent debts that he acquired during that same timeframe. With the three remaining debts too large to handle without a repayment plan, he is currently taking a short break to amass sufficient funds and a better credit rating in order to secure a structured and reasonable repayment plan with fair terms. He hoped to have that plan in effect within a few months following the hearing. With a monthly net remainder between \$900 and \$1,300, and with his motivation to expeditiously resolve his debts, he has the ability to execute an appropriate plan. Given this reasonable strategy, I find AG ¶ 20(d) applies.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 46-year-old employee who has worked for the same defense contractor for almost three years. He has earned a college degree and he was a reservist in the United States military. A life-long bachelor, he is the father of three young children, for whom he provides regular child support.

Before about 2012, Applicant was the owner of a highly successful IT enterprise. After multiple years of only making a meager income as his company began to falter between 2012 and 2014, and while making less than \$15,000 a year at the nadir of his career, Applicant now averages a net annual salary of about \$145,000. He has satisfied five of the eight delinquent debts at issue, and, although ultimately unsuccessful, he demonstrated his efforts to try to avoid foreclosure of a second home. Remaining is a charged-off amount due for a vehicle and two business-related credit cards.

At the time of the hearing, Applicant had the motivation and the available income to start making headway on those debts through a reasonable and structured debt consolidation or repayment plan. He is poised to proceed with such a plan at this time. Given his demonstrated commitment and ability to honor his debts in the past, I find no reason to believe Applicant will fail in this goal. Indeed, given his progress to date, and his knowledge that resolution of these matters is a predicate to maintaining a security clearance, I find Applicant mitigated 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
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Subparagraphs 1.a-1.i:	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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge