



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



In the matter of:)
)
) ISCR Case No. 17-01397
)
Applicant for Security Clearance)

Appearances

For Government: Nicole a. Smith, Esq., Department Counsel
For Applicant: *Pro se*

11/29/2017

Decision

CREAN, Thomas M., Administrative Judge:

Applicant provided sufficient evidence to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is granted.

Statement of the Case

On September 2, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on December 2, 2016. (Item 4) After reviewing the results of the background investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On May 23, 2017, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) The action was taken under Executive Order 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 in the DOD on September 1, 2006.

Applicant answered the SOR on June 5, 2017. He admitted the four allegations of delinquent debt. He provided documentation to show one of the debts was paid (SOR 1.b), and that he has a payment plan for another debt (SOR 1.c). He requested that the matter be decided on the written record. (Item 2)

Department Counsel submitted the Government's written case on June 26, 2017. (Item 6) Applicant received a complete file of relevant material (FORM) on July 5, 2017, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely replied to the FORM by providing a one-page document concerning a payment plan from one of the creditors. The reply to the FORM was received by DOHA on August 8, 2017. I was assigned the case on October 23, 2017.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing National Security Adjudicative Guidelines for *Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM investigator (Item 4) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the administrative judge could determine that he waived any objection to the admissibility of the PSI summary. Applicant did not respond to the FORM, so he did not raise any objection to consideration of the PSI. Since there is no objection by Applicant, I considered information in the PSI in my decision.

Findings of Fact

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 35 years old. He graduated from high school in May 2000, and he received a technical school diploma in May 2001. He served on active duty in the Army from September 2001 until December 2015, when he received an honorable discharge as a sergeant (E-5). There is some indication in the record that Applicant was deployed while on active duty. There is no indication in the record that Applicant was granted eligibility for access to classified information while on active duty. He still serves in the Army Reserve. After Applicant left the Army in December 2015, he was unemployed until August 2016. He did not receive unemployment compensation while unemployed. He

started working with his present employer as a heavy equipment technician in August 2016. He first married in September 2005 and divorced in September 2011. He married his present wife in June 2013. He has a child and two step-children. (Item 3, e-QIP, dated September 2, 2016; Item 4, PSI, dated December 2, 2016)

The SOR alleges, and the PSI and a credit report (Item 5, dated April 28, 2017) confirm the following delinquent debts for Applicant: a charged off credit card debt for \$11,735 (SOR 1.a); a utility debt for \$770 (SOR 1.b); a credit card account in collection for \$1,155 (SOR 1.c); and a television service equipment debt for \$96 (SOR 1.d). Applicant admitted all of the debts in his answer to the SOR. The amount of delinquent debt is in excess of \$13,756. The overwhelming majority of the debt is the credit card debt at SOR 1.a.

The credit card at SOR 1.a was opened in November 2010, and became delinquent in 2012 as the result of the divorce from his first wife. Applicant attributes his failure to resolve the debt to his divorce and unemployment after his discharge from the Army. He noted this debt on the e-QIP, stating that it was the result of his divorce. (Item 3, e-QIP, dated September 2, 2016) In the PSI Applicant stated that he had no income while unemployed. He and his wife only had her income to pay debts. His lack of income was the reason for his delinquent debt. (Item 4, PSI, dated December 2, 2016, at 4)

Applicant, in response to the FORM, provided a settlement agreement with the SOR 1.a creditor reached in June 2017. The settlement agreement requires Applicant to pay \$4,108 by July 2, 2018, and meet certain other requirements. (Item 7, Response to FORM, Letter, dated June 6, 2017) Applicant still has approximately seven months to meet the requirements.

In his response to the SOR, Applicant provided a receipt for payment of the debt at SOR 1.b. Applicant provided documentation that he has a payment plan in place with the creditor for the debt at SOR 1.c. The plan requires five monthly payments of \$192.43 starting in July 2017. Applicant did not need to make a payment until after he responded to the FORM.

In his SOR response, Applicant noted that the debt at SOR 1.d has been paid. In the PSI, Applicant stated that he had no knowledge of the debt but would inquire about the debt. The debt seems to be for television service equipment. If he owed the debt, he would pay it. He did not provide documentation of return of the equipment or payment of this debt. (Item 4, PSI, dated December 2, 2016, 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 must be considered 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 to classified information will be resolved in favor of 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 for 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

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. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. (AG ¶ 18).

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet their financial obligations. 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 required to manage his or her finances in such a way as to meet financial obligations.

A credit report and Applicant's admissions in the response to the SOR confirm his delinquent debts. Adverse information in a credit report and an admission by Applicant meets the substantial evidence standard to establish financial delinquency. The evidence is sufficient to raise the following Financial Considerations Disqualifying Conditions under AG ¶ 19:

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

Applicant provided proof that he paid the debt at SOR 1.b. He provided settlement agreements for two of the debts (SOR 1.a and 1.c). The time for him to make payments under the agreements had not been reached by the time Applicant replied to the FORM. The Government established the adverse financial issues, so the Applicant has the responsibility to refute or mitigate the issue. I considered the information and documents Applicant provided in mitigation.

I considered the following Financial Consideration Mitigating Conditions under 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;
- (b) the conditions that resulted in the financial problems 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 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.

The mitigating conditions at AG ¶¶ 20(a), and 20(b) apply. Applicant incurred the debts while on active duty, and he then had a long period of unemployment after his discharge from the Army. Available evidence shows that he was gainfully employed in the Army until December 2015, and then unemployed for eight months until August 2016. He did not receive unemployment compensation. His wife was employed when he was unemployed. He did not provide any information on his present finances or salary.

Applicant's delinquent debt was mainly caused by his leaving the Army and unemployment. He has been gainfully employed since August 2016. He reached out to his creditors and paid one debt and has settlement or payment agreements on two other debts. The causes of his debt are unlikely to recur and were largely beyond his control. He acted reasonably under the circumstances by paying one debt and contacting creditors to reach settlement or payment agreements. The file indicates that the fourth debt, a small debt concerning television service equipment, has been resolved. While the time for Applicant to report on or make payments on his agreements has not arrived, his payments of past debts indicates that he will make the required payments as required.

Mitigating condition AG ¶ 20(c) does not apply. Applicant did not present any evidence of financial counseling.

Mitigating condition AG ¶ 20(d) applies. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant is not required to be debt-free nor must his plan require paying off all debts immediately or simultaneously. All that is required is that Applicant act responsibly given his circumstances. Applicant's plan must show a systematic method of handling debts, and Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant established that he has a reasonable plan to resolve financial problems. He has two debts remaining to pay and he has settlement or payment agreements in place on both debts. Applicant presented evidence of pay of the utility debt (SOR 1.b). The time has not arrived for Applicant to report on or make payments under his payment agreements. (SOR 1.a and 1.c) He presented sufficient information to show a good-faith effort to resolve all of his debts.

Applicant provides sufficient documentation to show proof of payments, correspondence to or from the creditors to establish maintenance of contact, evidence of negotiate payment plans, or other evidence of progress or resolution. Applicant was able to make stay progress to resolve his debts. There is sufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. His reasonable and responsible actions towards his finances is a strong indication that he will protect and safeguard classified or sensitive information. Under all these circumstances, Applicant mitigated the financial security concerns.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the applicant's conduct and all relevant 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 access to classified information must be an overall common-sense 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 active duty Army service. Applicant provided sufficient credible documentary information to establish that he took reasonable and responsible action to resolve his financial obligations. Applicant demonstrated appropriate management of his finances and established a record of action to resolve financial issues. Overall, the record evidence leaves me without questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has established his suitability for access to classified information. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial situation.

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.d: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge