



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



In the matter of:)
)
) ISCR Case No. 17-02961
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell Esq., Department Counsel
For Applicant: *Pro se*

03/06/2018

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant presented sufficient evidence to mitigate security concerns raised by his past financial problems. Clearance is granted.

Statement of the Case

On September 28, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline.¹ Applicant answered the SOR and requested a decision on the administrative (written) record (Answer).

On November 30, 2017, Department Counsel sent Applicant the Government's written case, known as a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant twelve exhibits for admission into the record. Applicant submitted a response to the FORM (Response). The exhibits accompanying the FORM

¹ The CAF took this action under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive).

and the documents Applicant submitted with his Answer were admitted into the record. On February 23, 2018, I was assigned the case for decision.²

Findings of Fact

Applicant, 33, is employed as a field engineer for a defense contractor. He obtained his high school diploma in 2003. He served in the U.S. Navy on active duty from 2009 until he was medically discharged in 2016. He completed his most recent security clearance application in 2016. He has been with his current employer since June 2016. He has previously held a security clearance. (Item 5)

The SOR alleges that Applicant has a past-due mortgage account in the amount of \$54,405, with a total loan balance of \$165,093; a collection account in the amount of \$2,325; and a collection account in the approximate amount of \$36. (Item 1) Applicant admitted the allegations and provided explanations. (Item 4)

Applicant married in 2008 and separated from his wife in 2016. It was not in the record as to the divorce date. As a result of the separation and pending divorce, Applicant incurred financial problems. He has a child as a result of his marriage. He is now single. During his naval career, Applicant served abroad frequently. In 2013, when he was deployed on active duty, a home that he purchased in 2011, lost the tenants. The renters moved out without notice, and Applicant could not find other renters. This left him in a poor financial situation. (Item 4)

As to SOR 1.a, the mortgage in the amount of \$165,093 which became delinquent has been resolved. When renters broke a lease in 2013 and Applicant was deployed, he could not find new renters. He allowed his elderly, disabled parents to live in the home rent free. The last payment on the mortgage was made in August 2013. At the same time he consistently worked with the mortgage company to pay various amounts, but they would not work with him. He hired an attorney to help resolve the issue and the action has been in court. An agreement was reached with the loan holder. The case has been fully settled. Applicant consented to a Final Consent Judgment and there is no deficiency for which Applicant is responsible. He attached legal documentation to confirm his assertion. (Attachment to Response to FORM)

As to SOR 1.b, a collection account in the amount of \$2,325, this debt was the result of his ex-wife not paying the house loan. Applicant gave her the money that he received from his military move plus extra for expenses. She told him that she would take responsibility for the debt. However, she did not and Applicant paid the debt. He submitted documentation that the account has been paid in full, and the balance is zero. (Attachment to Response to FORM)

² On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive 4 (SEAD-4), revising the Adjudicative Guidelines. The revised adjudicative guidelines are applicable to all security clearance decisions issued on or after June 8, 2017. Accordingly, I have applied the revised adjudicative guidelines (hereinafter "AG"). ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

As to SOR 1.c, a cable collection account in the amount of \$36, Applicant paid the debt because his ex-wife did not use the money that he gave her to pay it. He submitted documentation to prove his claim. (Attachment to Response to FORM)

Applicant submitted four letters of recommendation. A letter from the vice president of his current company, who retired from the military and held a security clearance, recommends Applicant highly. He has worked closely with Applicant for the past two years and is familiar with his technical expertise, work ethic, and personality. The vice president also knows in detail the financial issues in the SOR and commends Applicant for his ability to work calmly with his ex-wife and the creditors. As Applicant's manager of record, he attests to Applicant's trustworthiness and his good judgement. He also noted that Applicant has a sense of family responsibility and knows that he has supported his elderly disabled parents.

Two letters from co-workers attest to the fact that Applicant is an extremely skilled worker and has an excellent work ethic. He is an integral part of the team, and plays a key role in work that is accomplished. The co-workers have known Applicant since 2016. They also have seen him mentor other employees. Applicant is professional in his duties and his tasks are done in a timely manner. Applicant takes pride in his work. The co-worker also knows the particulars of Applicant's financial situation. (Attachment to Answer)

Another retired military officer in the company who hired Applicant states that he is a gentleman and a patriot. Applicant is described as one who has forged a reputation that is impeccable and above reproach. Applicant has earned the respect of peers and management. (Attachment to FORM)

Early credit reports reflect medical collection accounts from years before he entered the military and had no insurance. (Items 9,10) The credit reports also reflect that Applicant's accounts are "pays as agreed."

As of the submission of the case for decision, the delinquent debts in the SOR allegations are resolved. Applicant's credit reports do not reflect any other delinquent accounts. (Item 7)

Law & Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individuals are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2; SEAD-4, ¶ E.4.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the

complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. AG ¶ 2.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges make certain that applicants: (a) receive fair notice of the issues, (b) have a reasonable opportunity to address those issues, and (c) are not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In deciding a case, a judge must resolve any doubt raised by the evidence in favor of the national security. AG ¶ 2(b). *See also* SEAD-4, ¶ E.4. Moreover, the Supreme Court has held that officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an 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

Guideline F, Financial Considerations

Applicant incurred delinquent debt when he was separated and deployed abroad. His home mortgage became delinquent, as well as two other debts. The presence of delinquent debt can raise the Guideline F security concern, which is explained at 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. . . .

Guideline F is not limited to a consideration of whether a person with financial issues might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances

giving rise to delinquent debt cast doubt upon a person's judgment, self-control, and other qualities essential to protecting classified information.³

In assessing Applicant's case, I considered all the disqualifying and mitigating conditions under Guideline F, including the following pertinent ones:

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

AG ¶ 20(a): the behavior happened so long ago, . . . 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, . . .), 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 past financial problems that are alleged in the SOR are the result of separation and pending divorce. He admitted to the delinquent debts. Applicant had earlier medical debts before he entered the military. He served in the military and was medically discharged.

Applicant did not simply walk away from his debts. Instead, he responsibly addressed each of his debts. He attempted to work with the mortgage company after renters left the home without notice, and he could find no other renters. He was deployed at the time. Applicant offered to pay various sums of money but the loan company wanted the full amount. He hired a lawyer to resolve the issue. There is no deficiency balance and the issue was resolved. The other two debts were the result of his ex-wife not being responsible after Applicant provided her with the money to pay the marital bills. Applicant paid the bills. He persisted and has resolved all the SOR allegations. His current credit report shows accounts that are "pays as agreed." He made good-faith efforts to resolve his debts.

The circumstances giving rise to Applicant's past financial problems do not cast doubt on his ability and willingness to continue to properly handle and safeguard classified information. Additionally, the manner in which he addressed the debts that he incurred following his medical discharge and divorce raises favorable inferences regarding his continued suitability. Applicant's present financial situation does not raise a security concern. AG ¶¶ 20(a), 20(b), and 20(d) apply.

After a complete and thorough review of the record evidence, including considering the whole-person factors set forth in AG ¶ 2, I find that Applicant met his

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

heavy burden of proof and persuasion in mitigating the security concerns at issue. Furthermore, he established his eligibility for continued access to classified information.

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 (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.c: For Applicant

Conclusion

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to continue Applicant's eligibility for access to classified information. Applicant's request for a security clearance is granted.

Noreen Lynch
Administrative Judge