



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01940

Appearances

For Government: Charles Hale, Esquire, Department Counsel
For Applicant: Alan V. Edmunds

02/27/2018

Decision

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

Statement of the Case

On October 17, 2015, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).¹ On December 1, 2015, Applicant responded to the SOR, admitting four of the 11 allegations raised and requesting a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on April 12, 2016. The matter was initially scheduled on May 20, 2016, for a June 21, 2016, hearing. By mutual request of counsel, that hearing was cancelled on June 20, 2016, and rescheduled on June 23, 2016, for a July 27, 2016, hearing. The hearing was convened as scheduled.

The Government offered five documents, which were accepted into the record without objection as Government exhibits (GExs.) 1-5. Applicant gave testimony and

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 has been again amended. The present AG, applied here, is in effect for any adjudication on or after June 8, 2017.

offered two documents, accepted without objection as Exs. A-B. The record was left open through August 26, 2016, to provide the parties with sufficient time to submit additional materials. In the interim, a transcript (Tr.) of the proceedings was received on August 4, 2016. On August 19, 2016, Applicant submitted six additional documents. After review by the Government, they were forwarded to me on September 3, 2016. They were accepted without objection as Exs. C-H, and the record was closed. After review of the record as a whole, I find that Applicant mitigated financial considerations security concerns.

Findings of Fact

Applicant is a 49-year-old engineer who has worked for the same entity since 2011. His salary recently rose from about \$80,000 to about \$110,000. (Tr. 33) Applicant served in the United States military from 1987 until he was honorably discharged in 1997. He has maintained a security clearance for about 30 years without adverse incident. Applicant has earned a bachelor's degree and pursued post-graduate technical training. He is the father of three children, the eldest of whom is over 21, while a middle child is poised to turn 18.

In March 2000, Applicant filed for Chapter 7 bankruptcy protection on the advice of his attorney. (Tr. 41-42) That bankruptcy was ultimately discharged in July 2000. It was brought on due to liabilities related to a home foreclosure and a 2002 divorce from his first wife, a wage earner and the mother of his eldest child, when Applicant was only earning about \$36,000 a year. Later, he experienced two periods of unemployment, in 2007 (four months) and in 2010 (one to two months).

Applicant married his present wife, a professional nurse, in 2005. In 2012, she left Applicant and took his two younger children with her to another state. Without her monetary contribution, drawn from a salary of about \$70,000, Applicant became solely responsible for his remaining child, the mortgage, car payments, and other household bills. At the time, he had an annual salary of \$80,000 and the financial burden was heavy. Although they reconciled in 2014 for a brief period, during which time she did not work or contribute to the household coffers, they again separated in the summer of 2015. (Tr. 29-31) They have no expectation of reconciliation. They have entered into a formalized separation agreement. Under that agreement, each party is responsible for those debts personally incurred. (Tr. 45; Ex. E) Their relationship is highly strained.

At issue in the SOR are the following delinquent debts, as identified by their designation within the SOR allegations:

1.b – Medical collection account (\$93) – Applicant denies knowledge of, and responsibility for, this account. The bill was not processed through his medical insurer. He notes that “from a household perspective,” it was an account incurred by his spouse. (Tr. 19) His position is that, pursuant to their agreement, it is his wife's obligation.

1.c – Past-due education loan (\$2,022) – Current. Applicant acknowledged that this account is his. It was overlooked because he had believed the account was in forbearance. He showed that he is now current on this account. (Tr. 21-22; Ex. 5 at 2)

1.d – Past-due automobile loan (\$828) – Past-due. Applicant admitted this account is his. He stated that he has been making payments on the account, but noted that he is disputing some of the charges posted. (Tr. 22) Applicant provided no documentation, however, indicating that payments are being made. (Tr. 22-23)

1.e – Past-due mortgage account (\$35,278) – Current. Applicant provided documentary evidence reflecting that this account, which had become delinquent during Applicant's recent separation, is now current. (Tr. 23-24; Exs. B and 5)

1.f – Charged-off medical account (\$1,095) – Applicant denies responsibility for this account, stating that he never used this provider. (Tr. 24) He noted that the charge never passed through his flexible spending medical account. Applicant does not recall receiving anything from the Internal Revenue Service (IRS) regarding a charged-off account. (Tr. 49) He asserts the debt belongs to his estranged wife.

1.g-1.j – Locality-level government collection (\$55, \$55, \$300, \$200) – Applicant denied responsibility for what he believes are moving citations or parking tickets. He noted that he does not believe he was driving his vehicle when they were incurred. (Tr. 24-26) Only his estranged wife had access to his car at the time the citations were issued. (Tr. 55) Although there is no evidence he had previously disputed these charges formally, he learned how to dispute credit report entries at the hearing. (Tr. 27-30) It was expected they would soon be disputed directly.

1.k – Child support arrearage (\$8,100) – Current. This account was previously brought up-to-date. (Tr. 27-28; Exs. 5 and D)

1.l – Past-due (second) mortgage account balance (\$4,872) - Current. This account is now up-to-date. (Tr. 27-28; Ex. 5)

Applicant has completed financial counseling, which he found beneficial. (Ex. A) Out of that counseling came a budgetary worksheet. He is current on his monthly obligations and generally has a net monthly remainder. To supplement his income when his wife returned home unemployed in 2014-2015, he withdrew funds from his retirement account. Repayment of that sum is the main factor now keeping him from a more significant monthly surplus. Applicant presently has about \$1,000 in his checking account, and he maintains a retirement account. Child support for his middle child should soon be curtailed. Meanwhile, he is now enjoying a recent and significant raise. Past problems staying timely on a car note were the result of shifting monthly due dates.

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 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 alleged in the SOR. Under the Directive, 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 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 11 delinquent accounts, amounting to almost \$53,000 in debts. This is sufficient to invoke 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, five 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;

AG ¶ 20(c) the person has received or is receiving 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;

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

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's delinquent debt arose from a combination of factors. These factors included a divorce; two periods of unemployment; a reduction in household when his wife left him and then returned unemployed; and his most recent marital separation. To limit his acquisition of debt at that time, he borrowed money from his retirement account to meet his obligations. Consequently, AG ¶ 20(b) applies.

Applicant has since received financial counseling, which he found beneficial. Today, of the multiple delinquent debts at issue, Applicant has successfully addressed four of the accounts at issue. Through payment, satisfaction, or other method, he has reduced the total sum remaining at issue from almost \$53,000 to only about \$2,600. This noteworthy achievement raises AG ¶ 20(c)-(d).

Remaining at issue are two medical bills (1.b, 1.f) which were apparently not covered by his health insurance and, he believes, are the responsibility of his estranged spouse pursuant to their separation agreement. He expressed his intent to formally dispute what appear to be parking tickets or moving violation citations (1.g-1.j), due to the fact that his wife had access to the vehicle at the time. Therefore, he argues that they are her debts under their separation agreement. He failed, however, to provide documentary evidence reflecting his efforts to dispute the matter with the governmental entity or a credit reporting bureau or solicit her aid in addressing the matter. He also neglected to provide a history of payments on the car loan at issue (1.d). While these mostly disputed accounts remain substantially unaddressed, his separation agreement gives him a reasonable basis to dispute some of these delinquent debts. Therefore, AG ¶ 20(e) applies in part.

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 49-year-old engineer who has worked for the same employer since 2011. There, his salary recently increased from about \$80,000 to about \$110,000. He honorably served in the United States military for a decade, and he has successfully maintained a security clearance for about 30 years. He has earned a bachelor's degree and completed post-graduate technical training. Once divorced and currently separated, he has three children: one is over 21, one is almost 18, and the third is a minor.

With a bankruptcy discharge in 2000, Applicant was debt free. A string of adverse circumstances then began: Applicant divorced his first wife in 2002. He endured two periods of unemployment in 2007 and in 2010. In 2012, his wife left him, making him solely responsible for maintaining their household. Although they reconciled in 2014, she was unemployed and no longer had the salary that once nearly matched his to contribute to the household coffers. In 2015, she again left him. This time, however, the couple formalized a separation agreement under which each spouse was personally responsible for any debts individually incurred. During these latter years, Applicant tried to stave off additional debt by borrowing from his retirement account.

Applicant has successfully addressed four of the 11 accounts at issue in the SOR. In addressing those accounts, he has reduced the total sum of the debts at issue from almost \$53,000 to only about \$2,600. The few remaining, inadequately addressed, debts are disputed, with Applicant believing they are his estranged wife's responsibility under their separation agreement. Having since received beneficial financial counseling, and learning how to formally dispute a delinquent debt by contacting one of the three

leading credit reporting bureaus (i.e., Experian, TransUnion, Equifax), he is now capable of personally disputing those matters by letter or on-line, or by negotiating some definitive resolution with his estranged spouse. Understanding that they must be addressed in order to preclude future security concerns, I am convinced he will follow-through on the matter expeditiously.

In sum, Applicant has made considerable progress on his delinquent debts, is committed to accomplishing whatever is needed to address all his financial issues, and has demonstrated his commitment to that goal. In light of the above, I find Applicant has 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
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 national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge