



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-04925
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: John V. Berry, Esquire, and Alison R. Wills, Esquire

03/31/2016

Decision

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

Statement of the Case

On April 19, 2015, 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 his April 30, 2015, SOR Response, Applicant admitted all allegations and requested a determination based on the written record. On June 29, 2015, the Government issued a File of Relevant Material (FORM) with 10 attachments (“Items”). Applicant was given an extension to file a FORM Response. It was submitted on September 8, 2015, with 19 attachments. The case was assigned to me on September 22, 2015. Based on my review of the case file and submissions, I find Applicant mitigated financial considerations security concerns.

Findings of Fact

Applicant is a 43-year-old warehouse technician working for a defense contractor. He earned a high school diploma and has attended some college. He has been continuously employed since 2005, except for September 2013 through November

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 September 1, 2006.

2013, when he was out of work on disability. Divorced in 2010, he is now remarried. He has three children and three stepchildren. He served in the military in the 1990s.

Today, Applicant is living within his means. He and his wife have a combined annual income in excess of \$208,000, consisting of approximately \$140,000 in salaries complemented by other income, and they both maintain retirement accounts. (FORM Response at 5; FORM Response Items 1, 3, and 7) His credit report shows improvement since 2010 and Applicant recently purchased a home with his wife. (FORM Response Items 4-5) At issue, however, is a 2010 Chapter 7 bankruptcy discharge involving approximately \$20,000 (SOR allegation 1.a), and 10 subsequent delinquent debts amounting to about \$7,000 (SOR allegations 1.b-1.k).

Applicant sought bankruptcy protection in 2010, the year of his divorce, when his financial obligations outweighed his income. (FORM Brief at 4; FORM, Item 4) While filing, he received financial counseling.² He then failed, however, to pay his 2010 and 2011 taxes, as required, due to a decline in work and a period of disability. (FORM Response at 6; FORM Response, Item 1) Consequently, in September 2014, he had state tax liens filed against him. (SOR allegations 1.b and 1.c, representing approximately \$6,240, comprised of a \$4,212 confessed judgment and \$2,028 tax lien) In his SOR Response, Applicant provided documentary evidence showing he was in repayment on both tax debts. (FORM Brief at 5; FORM, Item 4, at 2-3, 8-15) Evidence that the repayment was progressing and that the current balance owed on the confessed judgment was approximately \$1,878 was submitted in his September 2015 FORM Response. (FORM Response at 6) The judgment's balance was expected to be paid by March 2016. (FORM Response, Item 1) The current balance on the tax lien was reduced through \$100 bi-weekly payments to \$270 as of the time the FORM Response was introduced. It was expected to be satisfied by September 2015. (FORM Response, Items 1 and 10)

In addition, Applicant incurred medical bills before and through his September 2013 through November 2013 period of disability. The medical debts at issue range from \$39 to \$95 (SOR allegations 1.d-1.j) and cumulatively amount to about \$400. In his SOR Response, Applicant showed that he satisfied debts 1.i and 1.j. nearly three years ago. (FORM Brief at 6; FORM, Item 4 at 5, 31-34; see *also* FORM Response at 7 and FORM Response, Items 1, 4, and 11-13) These debts were for a March 2013 emergency room visit related to a severe hernia. (FORM Response, Item 1)

In response to the FORM, Applicant also provided documentary evidence showing he satisfied the debts noted at 1.d-1.h., which were related to physical therapy received during Applicant's 2013 period of disability. Those accounts are no longer adversely reflected on his credit report. (FORM Response, Item 4) Consequently, all these delinquent debts at issue have been addressed.

² Besides the debtor education received in 2010, Applicant also completed a financial counseling program in 2015. (FORM Response at 5 and FORM Response Item 2)

Finally, there is a past due child support balance of about \$732 (SOR allegation 1.k). He became \$732 past-due on this account in 2013, when an adjustment for child support payments was not withheld from disability payments he received while away from work for medical reasons. As soon as he returned to work, he started addressing the arrearage. He has made regular payments on this account balance. The balance as of September 2015 was \$17, down from the \$108 balance yet owed when he submitted his SOR Response. (FORM Response, Items 1, 14-15; FORM Brief at 6; FORM, Item 4 at 5, 35-37). That \$17 balance should have been eliminated last year.

Applicant is a dedicated and trusted worker. He has great spirit and takes visible pride in his work. The support he provides is considered superior in nature. He is especially cited for his customer relations skills His exceptional work is greatly appreciated by his superiors. (FORM Response, Item 16) He was recently named the recipient of a major workplace award from his Commander. (FORM Response, Item 17) Outside of work, he is active with both his community and church, where he is a respected member of his congregation. (FORM Response, Items 18-19)

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 AG ¶ 2(c), 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information.

Section 7 of Executive Order 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).

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 information. An individual who is financially overextended is at risk of engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant had his debts discharged under Chapter 7 bankruptcy in 2010, then acquired approximately \$7,000 in new delinquent debts. This debt includes a child support arrearage, medical bills, and a tax-related confessed judgment and a state tax lien. This is sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts; and

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

Five conditions could mitigate these finance-related security concerns:

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated 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.

While most of the debts at issue are now completely or substantially satisfied, their progress has been relatively recent. Those debts are multiple in number, and their origin is not unique. Therefore, I do not find that AG ¶ 20(a) applies. However, the facts are clear that health-related issues warranted immediate, if not emergency medical care between 2012 and 2013. This adversely impacted Applicant, his ability to work, and his ability to generate income. It is also noted that Applicant worked in a relatively expeditious manner to begin addressing his medical debts – to include his satisfaction of some of those debts nearly three years ago. It is further noted, albeit to a lesser extent given the scant information provided, that Applicant was divorced in 2010 and that he received financial counseling for a second time in 2015. In light of these considerations, I find that AG ¶ 20(b) applies.

As noted above, Applicant received financial counseling. Evidence shows that his finances have improved, as has his credit report. He recently purchased a home with his wife. The couple has a notable income and they live within their means. Meanwhile, the documentary evidence shows that considerable progress has been made on all of the delinquent debts at issue. Indeed, given the very minor balances yet owed on some of the debts at issue as of September 2015 (i.e., \$17 to \$270), it seems fair to assume, given Applicant's track record thus far, that Applicant's strategy for satisfying his debts is now completed or poised for completion. Therefore, I find that AG ¶ 20(c) and AG ¶ 20(d) apply. AG ¶ 20(e), however, is inapplicable in this case.

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 relevant circumstances. The administrative judge should consider the adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c) sets forth the need to utilize a whole-person evaluation.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis. Applicant is a 43-year-old warehouse technician who served in the military, earned a high school diploma, and completed some college-level coursework. He is remarried and has six children in a blended family. He has been continuously employed since 2005, except for September 2013 through November 2013, when he was out of work on disability due to a severe medical condition necessitating physical therapy.

Applicant received a discharge of his debts in 2010 under Chapter 7. Soon thereafter, he encountered additional financial issues. These were caused by personal medical issues that impacted his ability to fully work, then required physical therapy. Meanwhile, his employer's workplace faced difficult times. As a result, he was unable to pay his 2010 and 2011 state taxes. As well, he acquired a minor (\$732) past-due child support arrearage which demanded his immediate attention, and some unpaid or uncovered medical account balances (about \$400) owing to his disability. Since then, Applicant has again received financial counseling, entered into repayment arrangements with the majority of his creditors, and, as of September 2015, satisfied all but a nominal amount of the debt at issue. That remaining balance appears to have been poised for satisfaction in the past few months. Today, Applicant and his wife have a sizeable income and live within their means in a new home.

Overall, Applicant provided sufficient information to explain how his recent delinquent debts arose. He also provided sufficient documentary and narrative evidence to show how he has brought his debt under control. Meanwhile, he demonstrated that he can afford his current lifestyle, that he is a valued worker, and an active person in his community. 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
Subparagraphs 1.a-1.k:	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