



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



In the matter of:)	
)	
)	ISCR Case No. 14-06937
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

08/19/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On April 30, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 within the DOD on September 1, 2006.

Applicant answered the SOR on May 15, 2015, and requested a hearing before an administrative judge. The case was assigned to me on June 16, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 19, 2015. I

convened the hearing as scheduled on July 30, 2015. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through K, which were admitted into evidence without objection. The record was held open until August 17, 2015, to allow Applicant to submit additional documents, which he did, and they were marked as AE L through T. Department Counsel had no objections, and they were admitted into evidence.¹ DOHA received the hearing transcript (Tr.) on August 7, 2015.

Findings of Fact

Applicant admitted all the allegations in SOR except ¶¶ 1.c and 1.k. His admissions were incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 32 years old. He earned a bachelor's degree in 2014. He married in 2003 and divorced in 2005. He has two children, ages four and two. His eldest is from a prior relationship and he pays child support. He cohabitates with the mother of his younger child. She has a 12-year-old daughter that lives with them. He served in the Marine Corps from 2001 to 2005 and was honorably discharged in the paygrade E-4. He was unemployed in 2010. He began working for his current employer in January 2011 and resigned in February 2014 to work for another company. He worked for that employer from February 2014 until June 2014 when he was laid off. He was unemployed from June 2014 to September 2014. He worked for a new company from September 2014 until he was rehired by his current employer in November 2014. These periods of unemployment impacted Applicant's ability to pay his bills.²

Applicant believed his medical bills were all paid for through the Department of Veteran's Affairs. He provided information about what emergency and non-emergency coverage he may be entitled to.³ He now understands his obligations regarding his medical bills. The debt in SOR ¶ 1.a (\$929) is a medical debt. Applicant has settled and paid the debt.⁴ The debt in SOR ¶ 1.e (\$370) is a medical debt. He has an agreement to make three payments to resolve it. He has made the first payment.⁵ The debts in SOR ¶¶ 1.f (\$2,955) and 1.g (\$216) are also medical debts to the same creditor. Applicant has a settlement agreement to make four monthly payments of \$300. He has made the first

¹ Hearing Exhibits I and II are Department Counsel's email memoranda noting he did not object to the additional exhibits.

² Tr. 15-23.

³ AE P.

⁴ AE L and T.

⁵ AE M.

payment.⁶ The medical debt in SOR ¶ 1.j (\$265) was paid in full.⁷ Applicant provided documentation for these debts.⁸

The debts in SOR ¶ 1.c and 1.k (\$205 and \$391) were mistakes on his account. Applicant provided a letter from the creditor confirming the mistake and a copy of a refund check he received. The debts are resolved.⁹

The debt in SOR ¶ 1.d (\$1,927) was for a dispute over a charge made by a landlord after Applicant vacated an apartment. Applicant testified he did a walk-through of the apartment when he left and there was no damage noted. Several months later he received a bill for the cost of replacing the carpet. He attempted to dispute it but no longer had the paperwork. He has a payment agreement with the creditor and has made two payments of \$170. He provided documentation. He intends to continue payments until the debt is resolved.¹⁰

The debt in SOR ¶ 1.h (\$2,696) is for a private student loan. Applicant arranged an installment agreement to pay \$50 a month to satisfy the debt. He has started the payments and provided documentation. He has other student loans that are deferred.¹¹

The debts in SOR ¶¶ 1.b (\$665) and 1.i (\$34,018) are for the same account, which is an equity loan for a home that Applicant purchased from his parents in 2005. His parents continued to live in the house. Applicant used the loan to make repairs on the house. In 2010 Applicant was unemployed and could not pay the loan. He stated the first mortgage is current, but the loans are greater than what the house is currently worth. He has not made payments on the equity loan since 2010. The home is listed for sale, and he is currently attempting a short sale. He is waiting for the bank to approve the sale. He understands he may be responsible for any deficiency and for any tax consequences if the debt is forgiven. He provided the contract and other documents that explain his obligations.¹²

Applicant provided a detailed spreadsheet that he uses as his budget. He files his tax returns timely each year. He and his cohabitant share living expenses. He does not have health insurance, but she carries the child on her insurance plan. He has no other delinquent debts. He attributed his medical debts to a misunderstanding of what

⁶ AE N.

⁷ AE O.

⁸ Tr. 44-53; AE D. The debts alleged are supported by the credit report in GE 2.

⁹ Tr. 40-44; Answer to SOR; AE C and R.

¹⁰ Tr. 28-30; AE A.

¹¹ Tr. 31-40; AE B, H.

¹² Tr. 53-67; AE E, F, G, Q.

expenses were covered by the VA. He attributes his financial issues to periods of unemployment.¹³

Character letters describe Applicant as a trustworthy and professional individual who has always protected sensitive information and is respectful of privacy concerns. He has a good moral compass. He is an honest and upstanding citizen.¹⁴

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. 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

¹³ Tr. 68-76; AE S.

¹⁴ Tr. 67; AE I, J, K.

classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of 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

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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 having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant had delinquent debts that he was unable to pay for several years. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 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;

(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;

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

(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 and provides evidence of actions to resolve the issue.

Applicant had delinquent debts that he recently resolved. He still has an equity loan that he is addressing. Because that debt is still being resolved the debt is recent. He has paid or is resolving the other debts alleged in the SOR. Applicant's past conduct does not cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant misunderstood his VA entitlements regarding his medical expenses. After he learned what was not covered he resolved or is resolving those that were not covered. He experienced periods of unemployment that impacted his finances. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. When Applicant learned he was responsible for some of his medical expenses, he paid them or arranged payment plans. He is actively attempting to sell his house and understands his financial responsibilities. Applicant did not ignore his financial obligations. I find he acted responsibly under the circumstances and AG ¶ 20(b) applies.

There is no evidence Applicant has received financial counseling, but there are significant indications that his financial problems are being resolved and are under control. He has paid or is resolving all of the alleged debts. He provided a detailed budget that shows his and his cohabitant's income and where it is being spent. Although the equity loan is not yet resolved, he has not ignored his obligation and understands his responsibility when the sale of the house is completed. He has initiated good-faith efforts to pay the creditors. AG ¶¶ 20(c) and 20(d) apply.

Applicant disputed the debts in SOR ¶ 1.c and ¶ 1.k. He provided documented proof to show there was a mistake made regarding the debts. AG ¶ 20(e) applies.

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 nine adjudicative process factors listed at AG ¶ 2(a):

- (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 a security clearance must be an overall commonsense 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 32 years old. He served in the Marine Corps and was honorably discharged. He had periods of unemployment that impacted his finances. He misunderstood his medical benefits through the VA. He has paid or resolved all of the SOR debts except the equity loan. He understands his responsibilities regarding that debt once his house is sold and is not ignoring his financial obligations. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

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.

Carol G. Ricciardello
Administrative Judge