



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



In the matter of:)	
)	
)	ISCR Case No. 14-03467
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

04/24/2015

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On October 6, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on October 24, 2014, and requested a hearing. The case was assigned to me on February 13, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 18, 2015, setting the hearing for March 4, 2015. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection.

Department Counsel's exhibit index was marked as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A through E. The exhibits were admitted into evidence without objection. The record was held open and Applicant timely submitted AE F, which was admitted into the record without objection. DOHA received the hearing transcript (Tr.) on March 12, 2015.

Findings of Fact

Applicant is 58 years old. He worked as a contractor for 27 years, before he was terminated from his position. Upon his departure, he was given a severance package of \$19,000. He is married, but has no children. He has supported his niece and nephews from time to time. He has a high school education and spent seven years in the Army before he was given a general discharge. He has held a security clearance in the past.¹

The SOR alleges Applicant has a delinquent collection account in the amount of \$66,292. The debt was listed on credit reports from February 2014 and February 2015. Applicant admitted the debt with an explanation. His admission is incorporated as a finding of fact.²

In 1996, Applicant purchased a manufactured home. He bought the home for \$75,000 and financed it through a creditor that charged an interest rate of eleven percent. One of the reasons for the purchase was to have enough space to care for his niece and three nephews. He lived there and made the payments through 2000 when he was transferred to another location. He entered into a sales contract with a relative to purchase the home in October 2000. From time to time, Applicant was required to make the monthly payment on the home because the buyer did not do so. Eventually, the buyer and his wife separated and Applicant was required to make the home payments. He was able to do so through 2012 when he was terminated from his job. At that point, he could no longer afford to make the payments. He sold the land upon which the home was located to a neighbor and expected correspondence from the creditor about negotiating a disposition of the home. He did not hear from the creditor, despite the fact that he sent them a letter offering to settle the account. The next correspondence he received about the home was when he was served a summons where he was a named defendant in a lawsuit to collect the remainder of the loan balance. The plaintiff in the case was a successor creditor. Applicant contacted an attorney for advice on how to proceed and was told he should not respond to the summons and the attorney would file for Chapter 13 bankruptcy relief. This type of bankruptcy is commonly referred to as a wage earner plan. It enables individuals with regular income to develop a plan to repay all or part of their debts.³ A default judgment was entered against Applicant in the

¹ Tr. at 34-37, 69; GE 1.

² GE 2-3 ; Answer.

³ See: <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter13.aspx>

amount of \$68,139 on December 10, 2014, and he then filed his Chapter 13 bankruptcy petition on December 13, 2014.⁴

Applicant paid over \$109,000 in payments before he defaulted on the home loan. He was not delinquent on any other debts when he filed his bankruptcy petition. He stopped making payments on his debts once the petition was filed, as directed by his attorney. His bankruptcy plan directs him to make monthly payments of \$563 for 60 months. He is to begin making payments in April 2015. As of the date of this decision, the plan was not yet been approved by the court. The amount from the default judgment is included as part of the payment (the underlying source of the judgment is the debt listed in SOR ¶ 1.a). He is current on his pending obligations and his taxes. He received financial counselling as part of the bankruptcy process.⁵

Applicant presented character letters from three coworkers and a former landlord. The coworkers opined that Applicant was trustworthy and reliable. The landlord stated that Applicant rented from his family from 2001 to 2014 and was never late with the rent and worked to improve the property.⁶

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 that are to be 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, administrative judges apply the guidelines 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.

⁴ Tr. at 33-35, 50, 54, 61-62; GE 4-5; AE B-C; Answer.

⁵ Tr. at 43, 47, 57, 50; GE 5; AE A, F.

⁶ AE E.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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* Executive Order 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 as follows:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁷

⁷ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant had one significant debt that led to a judgment. The evidence is sufficient to raise the disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

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

The delinquent debt attributed to Applicant is recent. He filed for Chapter 13 bankruptcy and has proposed a bankruptcy plan that will allow him to pay the delinquent debt and his other financial obligations. This effort to repair his financial position makes it reasonable to conclude that this type of debt will not recur, nor does it cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant's finances suffered an upheaval when the buyers of his home defaulted on their sales contract and Applicant was left to continue to pay the home loan. He then lost his job, but continued to stay in contact with the creditor hoping to work out a payment arrangement. When a successor creditor sued him, he hired an attorney who chose Chapter 13 bankruptcy relief to benefit Applicant. Although his plan is not yet approved, he credibly testified that he will be able to make the payments proposed under the plan. He also established that he could meet all of his other financial obligations. The events that led to his delinquent debt and subsequent judgment were conditions beyond his control. He has acted responsibly by filing for Chapter 13 bankruptcy relief and proposing a workable payment plan. AG ¶ 20(b) applies.

There are clear indications that the debt will be resolved through the Chapter 13 plan. He received financial counselling and made good-faith efforts to resolve the debt listed in the SOR. He supplied documentary evidence showing the proposed payments made under bankruptcy plan. AG ¶ 20(c) and ¶ 20(d) apply.

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 relevant 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.

I found Applicant to be honest and candid about the circumstances that led to his delinquent debt. His character references described him as a trustworthy and reliable man who has a history of paying his rent. He has proposed a prudent bankruptcy payment plan and showed he has the means to honor it. I found nothing to indicate a likelihood that similar circumstances would recur.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations.

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
Subparagraph 1.a:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge