



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



In the matter of:)	
)	
)	ISCR Case: 14-03788
)	
Applicant for Security Clearance)	

Appearances

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

July 23, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant accumulated six delinquent debts totaling \$45,913. The debts were incurred due to a contentious divorce and business failure. Applicant has acted responsibly, given the circumstances, by utilizing the services of a debt management company. Resulting security concerns were mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Statement of Case

On January 28, 2014, Applicant submitted a security clearance application (e-QIP). On September 3, 2014, the Department of Defense (DOD) 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant responded to the SOR (Answer) on September 25, 2014. (Item 3.) He requested that his case be decided by an administrative judge on the written record without a hearing in an email dated May 22, 2015. Department Counsel submitted the Government's written case on April 10, 2015. A complete copy of the File of Relevant Material (FORM), containing seven Items, was received by Applicant on May 2, 2015. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. He provided additional information in response to the FORM within the 30-day period, marked as Applicant's Exhibit (AE) A. Department Counsel had no objections to AE A, and it was admitted into the record. DOHA assigned the case to me on June 4, 2015. Applicant submitted a written request to provide additional documentation and the record was reopened until close of business on July 1, 2015. Applicant presented nine additional pages of documentation, marked AE B. Department Counsel had no objections to AE B, and it was admitted. The record then closed.

Findings of Fact

Applicant is 50 years old. He has been employed with a Government contractor since 1998. He has held a security clearance for 17 years. He married in 1985 and divorced in 2014. He identified ten children on his e-QIP, two of whom are minors. (Answer; Item 4.)

The SOR alleges Applicant owes approximately \$45,913 in delinquent debt on five delinquent credit cards and past-due child support obligations. In his Answer, Applicant admitted all of the credit card debts in SOR ¶¶ 1.a through 1.e. He denied the past-due child support obligation in SOR ¶ 1.f. (Item 2.) His debts are documented in the record credit report dated February 2014. (Item 5.) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant's debts were caused by his marital separation, which began in 2010; the subsequent divorce from his ex-wife; and the failure of the family-owned business that his ex-wife was managing at the time of their separation. Applicant worked full time and his ex-wife ran the family business. She failed to pay the business' bills. Applicant used his personal credit cards to sustain the business's debts until he sold the business in 2012. He used the proceeds of the sale to pay off some of the business debt. Applicant's marital assets were frozen during the divorce proceedings and he was unable to address the debts until after the divorce was finalized by a court in August 2014. (Item 3; Item 6; AE A.)

In September 2014 Applicant enrolled in a debt settlement company (DSC). DSC helped him create a budget, set up a payment plan into an escrow account, and actively engaged his creditors in negotiations to permit repayment of the five credit card debts. It also provided him with educational resources, which he has utilized, to learn to get out of debt and financially recover from his divorce. Applicant calls the DSC twice a month regarding the status of his accounts. He makes payments of "\$351.50 each payday by

automatic transfer” into the escrow account. He receives 26 paychecks per year. He has successfully made payments for more than seven months. The balance of the escrow account as of May 2015 was \$5,322.59. (Item 3; Item 6; AE A; AE B.)

Of the five credit card debts alleged, SOR ¶¶ 1.a and 1.e debts of \$17,814 and \$4,431 respectively, have been forgiven by the creditor and are resolved. These debts were owed to the same creditor. He listed these delinquent accounts with DSC. After he received two 1099-Cs in 2014, which resolved the indebtedness, the debts were removed from the DSC program. Applicant reported the 1099-Cs on his 2014 Federal Income Tax return. (Item 3; AE A.)

On June 23, 2015, DSC notified Applicant it had negotiated a settlement agreement with the creditor that held both the \$10,685.53 debt alleged in SOR ¶ 1.b and the \$4,827 debt alleged in SOR ¶ 1.d. The creditor agreed to accept \$5,880 to resolve SOR ¶ 1.b and \$2,656 to resolve SOR ¶ 1.d. Applicant accepted the settlement agreements. The money will be remitted to this creditor through payments directly from the escrow account over the next eight months. These debts are being resolved. (Item 3; AE B.)

Applicant’s delinquent credit card debt owed to the creditor identified in SOR ¶ 1.c in the amount of \$7,755.51, is currently unresolved. However, DSC is in “active negotiation” with this creditor of behalf of Applicant to seek a resolution. Applicant intends to work with DSC until it is “retired.” (Item 3; AE A; AE B.)

Applicant denied having a \$400 delinquent child support obligation, as alleged in SOR ¶ 1.f. He presented a statement from the child support service division of his state that showed his account was current as of August 2014 and reflects a balance due of \$0. This debt is resolved. (Item 3.)

Applicant has no new credit accounts. He has a monthly surplus of \$933.70. He is committed to resolving all of his delinquencies. (Item 3; Item 7; AE A.)

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 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable

guidelines in the context 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 the 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 avoided drawing 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, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Since 2010, Applicant accumulated \$45,913 in delinquent debt that he was unable or unwilling to satisfy. The evidence raises security concerns under both conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. I find the following provide mitigation:

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

Applicant's financial delinquencies were caused by both his marital separation and resulting divorce, and by the failure of his family-owned business operated by his ex-wife. Those were circumstances beyond his control and are unlikely to recur. He no longer owns the business. He does not live beyond his means, and earns a sufficient income, which should enable him to avoid future delinquencies. He immediately enlisted the help of DSC to repay his delinquencies after his divorce was finalized, and his assets were no longer frozen by the divorce proceeding.

Applicant has acted responsibly by saving money in an escrow account that will be used to repay his remaining debts. His child support obligation is current. While he resolved two business accounts through discharge by the creditor, and three other debts remain unpaid to date, he is acting responsibly, given the circumstances. Two of the three debts are business accounts that are negotiated to compromised amounts and he will pay them from the escrow account through DSC. The last account is in the

process of negotiation and it is likely that it will be settled, based on Applicant's success rate to date on resolving his debts.

His substantial monthly remainder indicates that future debts are unlikely to recur. Applicant's indebtedness does not cast doubt on his current reliability, trustworthiness, or good judgment. The security concerns with respect to his financial delinquencies are mitigated. AG ¶¶ 20(a), 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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant has worked for his employer since 1998. He has held a security clearance for 17 years. He experienced financial difficulties from 2010 to present, due to situations beyond his control. His divorce was contentious and his assets were frozen by the court from 2012 to 2014.

Once his divorce was finalized, he acted responsibly by hiring DSC to negotiate with his creditors. He has saved over \$5,322 in an escrow account over the past seven months toward the repayment of his debts. He plans to continue to make payments until all of his delinquencies are resolved. He has utilized the financial educational resources offered by the DSC. He has not incurred any new debts.

Overall, the record evidence leaves me without doubt as to Applicant's present eligibility and suitability for a security clearance. He met his burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.f: 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.

Jennifer I. Goldstein
Administrative Judge