



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



In the matter of:)
)
) ISCR Case No. 14-04414
)
Applicant for Security Clearance)

Appearances

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

01/08/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On February 2, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on March 9, 2015, and requested a hearing before an administrative judge. The case was assigned to me on August 14, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 21, 2015, scheduling the hearing for September 17, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted an e-mail and documents that were marked AE E through I and admitted without objection. DOHA received the hearing transcript (Tr.) on September 28, 2015.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He has worked for his current employer or a predecessor company at the same location since 2011. He served in the U.S. military from 1983 until he retired in 2003. He seeks to retain his security clearance, which he has held since his time in the military. He is a high school graduate. He has been separated from his spouse since about 2006. He has four adult children.¹

Applicant had financial difficulties after he retired from the military and was unemployed for a period. His 2006 separation also adversely affected his finances.²

The SOR alleges two state tax liens totaling \$3,340; a \$4,210 judgment for an unpaid car loan; a \$15,535 unpaid car loan; a \$168 medical debt; and four miscellaneous debts totaling \$4,288. Applicant admitted owing some of the debts, and he denied owing the remaining debts.

Applicant denied owing taxes to the two states that filed liens against him. For a period, he lived in State A and worked in State B. A tax lien of \$632 was filed against him in State B in November 2008. He disputed the lien, and it was deleted from his Equifax credit report. A \$2,708 tax lien was filed against him in State A in March 2012. The lien was released in May 2014.³

Applicant had a car that was repossessed and a car that was wrecked and "totaled." SOR ¶ 1.a alleges a \$15,535 charged-off debt for a car loan. Applicant stated this was the loan for the car that was repossessed in about 2007. He denied owing the amount alleged in the SOR. The credit reports in evidence list this debt as charged off, but none of them list a balance on the loan. The \$15,535 amount in the SOR was included in one credit report as the high credit on the loan. Applicant has never been contacted after the car was repossessed about any deficiency owed on the loan.⁴

SOR ¶ 1.d alleges the \$4,210 judgment for an unpaid car loan. Applicant stated that his car was wrecked, and the insurance company paid the creditor holding the car loan, but not the full amount of the loan. The judgment was awarded in August 2007.

¹ Tr. at 42; GE 1, 5.

² Tr. at 29; GE 1, 5.

³ Tr. at 13-17, 26, 38-39; Applicant's response to SOR; GE 1-5; AE A, D.

⁴ Tr. at 26-30, 35-36; Applicant's response to SOR; GE 2-5; AE D.

The judgment does not appear on the four newest credit reports in evidence, likely because it is past the seven-year period for reporting derogatory matter.⁵

Applicant accepted an offer from the creditor identified in SOR ¶ 1.b to settle a \$4,874 debt (alleged in the SOR and listed in the credit reports as a \$2,084 debt) for \$2,600, payable within 30 days of the offer letter dated October 27, 2015. Applicant established that he paid \$2,000 to the creditor by November 13, 2015.⁶

Applicant paid the \$168 medical debt alleged in SOR ¶ 1.i on September 22, 2015. He settled the \$514 debt alleged in SOR ¶ 1.g with a \$411 payment on November 13, 2015. He paid \$335 on November 5, 2015, to the collection company that is handling the \$502 debt alleged in SOR ¶ 1.h. It is unclear whether this is a settlement payment or a partial payment.⁷

SOR ¶ 1.c alleges a \$1,188 debt to a collection company on behalf of a bank. The debt is reported by all three credit reporting agencies on the March 2014 combined credit report. The activity date on the account is May 2012. When he was interviewed for his background investigation in March 2014, Applicant stated that he never belonged to the bank, and did not have a credit card issued by the bank. He provided similar testimony at the hearing. In his response to the SOR, he admitted owing the debt, but denied owing the amount alleged in the SOR, noting that he had a \$300 limit on the account. It appears that he may have confused this debt with another account, as the credit reports show another account with a \$300 limit. I accept his testimony as a denial of the allegation that he owes this debt. The debt does not appear on the January 2015 and August 2015 Equifax credit reports or the September 2015 TransUnion credit report.⁸

Applicant received financial counseling when he was in the military. He testified that his finances are in good shape and he is willing and able to pay his debts. He stated that he has attempted to contact several creditors that have not returned his calls.⁹ I found Applicant to be somewhat unsophisticated in financial matters, but I also found him to be candid and sincere about his desire to correct his financial problems.

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

⁵ Tr. at 17-19, 35; Applicant's response to SOR; GE 2-5; AE D.

⁶ Tr. at 37-38; Applicant's response to SOR; GE 2-5; AE D, F.

⁷ Tr. at 19-26, 31-35, 39; Applicant's response to SOR; GE 2-5; AE D, G-I.

⁸ Tr. at 30-31; Applicant's response to SOR; GE 1-5; AE D.

⁹ Tr. at 40-44; AE E.

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, 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."

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 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 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 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* 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 under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant had delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;
- (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 or provides evidence of actions to resolve the issue.

Applicant paid, settled, had payment plans for, successfully disputed, or otherwise resolved almost all of the debts alleged in the SOR. He stated that he attempted to contact several creditors, but they have not returned his calls. His actions came later than they should have, but I am convinced he has learned from the experience and that he will continue his efforts to resolve any remaining financial problems. Financial concerns are mitigated under AG ¶¶ 20(a), 20(c), 20(d), and 20(e).

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. I also considered Applicant's 20 years of honorable service in the U.S. military.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge