



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



In the matter of:)
)
) ISCR Case No. 14-06431
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: H. Michael Drake, Esq.

05/12/2016

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 February 4, 2015, 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; 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 answered (Ans.) the SOR on March 5, 2015, and requested a hearing. The case was assigned to me on October 19, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 9, 2015, setting the hearing for December 7, 2015. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection.

Applicant testified and offered exhibits (AE) A through H, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional evidence. He submitted AE I through L, which were admitted without objection. Hearing exhibits (HE) I through IV are included in the record. DOHA received the hearing transcript (Tr.) on December 29, 2015.

Findings of Fact

Applicant is 56 years old and has worked for a government contractor since 2002 as an engineer. He also owns a consulting business that he has operated for approximately 20 years. He holds an associate's degree. He is married and has five adult children, two of which live at home.¹

The SOR alleges Applicant had a charged-off consumer account in the amount of \$32,655 (SOR ¶ 1.a); a past-due account in the amount of \$341 (SOR ¶ 1.b); a delinquent medical debt in the amount of \$367 (SOR ¶ 1.c); and a collection account in the amount of \$7,581 (SOR ¶ 1.d). The debts were listed on credit reports from May 2013 and September 2014. Applicant admitted SOR ¶ 1.a, but denied the remaining allegations.²

Several factors affected Applicant's finances, including providing financial support for his mother-in-law from 2007 to 2014 when she passed away, supporting his son while he attended college, and a decline in income from his consulting business for about the past ten years. The family relied heavily on the secondary income from his consulting business.³ The status of the debts is as follows:

SOR ¶ 1.a: Collection debt for \$32,655.

In 2001, Applicant owned a home and proceeded to market it for sale because he wanted to move his family to a new location with a bigger home. He purchased a home at the new location. Because he was then unsure if he could sell his existing residence at about the same time he would close on the new residence, he secured a bridge-loan to use in the event he needed to make his monthly payments on his "old" residence while also making payments on his recently purchased residence. The timing of the sale of the former residence and the purchase of the new worked out so that he did not need to use the bridge-loan. He was told by the bridge-loan lender that the loan would be cancelled with no further action on his part. Several years later he was notified by the bridge-loan lender that he owed a \$250 maintenance fee on the loan as it had not been cancelled. Applicant paid the fee and decided to take advantage of this loan to make some home improvements. Applicant did not realize that the original ten-year term for the loan began in 2001, when he first secured it and not several years later

¹ Tr. at 33-34, 36; GE 1.

² Tr. at 34-36; GE 2-4.

³ Tr. at 34-38.

when he actually began using the loan proceeds. In 2011, the loan had fully matured and was pronounced due by the lender. Because it had never been secured by any real property, and thus was unsecured, the lender refused to renew or extend the loan term. When Applicant could not make the balloon payment, the debt was turned over to a collection service. Once turned over, the original lender refused to communicate with Applicant. Applicant dealt with four different collection services from 2011 to 2015 in attempts to work out payment arrangements. In June 2015, Applicant proposed a \$400 monthly payment plan. The original lender had reacquired the loan, but wanted the loan paid immediately. When payment was not forthcoming, the lender charged off the loan and Applicant received a Form 1099-C (cancellation of debt). Applicant continued to resolve this debt by refinancing his current residence and using funds from this refinancing to tender full payment on this debt to the lender in February 2016. This debt is resolved.⁴

SOR ¶¶ 1.b and 1.d: Past-due debt for \$341 and collection debt for \$7,581.

Applicant provided documentary evidence showing that these debts are from the same underlying transaction. This loan was secured in 2001 as a “Home Saver Advance” to assist Applicant in making his mortgage payments. He has made irregular payment on this debt over the years and it has been assigned to subsequent lenders. The most recent statement shows the loan balance decreased from \$7,581 to \$5,230. Applicant also indicated this loan would be paid when funds from his home refinancing were available. These debts are being resolved.⁵

SOR ¶ 1.c: Medical debt for \$367.

Applicant presented documentary evidence showing this account was paid in full in February 2016. This debt is resolved.⁶

Character Evidence.

Applicant’s current financial status is good. His annual income is approximately \$198,000. His neighbor, a former FBI special agent, testified that Applicant is trustworthy and dependable. He has known Applicant for 15 years and knows of no reason why he should not be trusted with classified information.⁷

⁴ Tr. at 38-44, 49-50, 53; Ans.; AE B-C, J-L.

⁵ Tr. at 56, 63; Ans.; GE 2; AE E, J.

⁶ Tr. at 57; AE I.

⁷ Tr. at 22-23, 25, 26, 37.

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.

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.

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 four delinquent debts that he failed to pay for an extended period. 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 debts attributed to Applicant are recent. All the debts have been resolved or are being resolved through the refinancing of his residence. Since the

delinquent debts arose as a result of the financial hardship caused by a downturn in his consulting business and having to provide financial support for his mother-in-law who passed away, they are unlikely to recur. These circumstances do not cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant's debts became delinquent when he suffered a downturn in his consulting business and he provided financial support for his mother-in-law. These were conditions beyond his control and he acted responsibly by attempting to work with the creditors and collection companies to resolve these debts. Ultimately, he refinanced his residence, which provided the funds to pay his remaining obligations. AG ¶ 20(b) applies.

All debts are resolved or are being resolved through Applicant's good-faith efforts. 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 considered the circumstances by which Applicant became indebted and how it affected his financial status. I found Applicant to be honest and candid about the circumstances that led to his debts. I find it unlikely that Applicant will find himself in a similar situation in the future.

