



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



In the matter of:)	
)	
)	ISCR Case No. 15-00683
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

04/15/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On August 8, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 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 in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on December 2, 2015. A notice of hearing was issued on January 29, 2016, scheduling the hearing for February 25, 2016. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-O at the hearing. I kept the record open until April 8, 2016, and exhibits (AX P- UU) were entered into the record without

objection.¹ The transcript was received on March 4, 2016. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted 15 debts and denied 9 debts in the SOR allegations under Guideline F. He provided explanations for each alleged debt.

Applicant is 45 years old. He graduated from high school and attended college but did not obtain his undergraduate degree. He completed a training program and a certification to increase his skills. (AX N, O) Applicant was divorced and has remarried. He has five children. He completed a security clearance application in 2013. (GX 1) He has been with his current employer since April 2015. He is sponsored for a clearance by a former employer. (Tr. 9)

Applicant's work as a contractor has been sporadic. He began full time employment in April 2015. Before that time, he was unemployed in 2008 from a long term position. He sought employment and took temporary positions because he was not able to find stable employment. (Tr. 13) Contracts were promised for a certain period of time, but ended much sooner, and he had no work. He was unemployed and underemployed in 2009 and 2011. During this time, he could not pay his bills. He used credit cards to help him meet his expenses. He was also advised to take a training program that would allow him to increase his career opportunities. He was told that unemployment would pay for the program. He did not realize that the program had to be in State A, and he chose one in State VB. Thus, he became liable for that account. (Tr. 14) In 2013, Applicant attempted to consolidate his debts with Oak View Law Group. (AX M) This company did not help him deal effectively with his debts. Applicant also did not have sufficient funds to work with this program.

The SOR alleges 24 delinquent debts, which consist of a state tax lien, a 2011 judgment, collection accounts, charged-off accounts, and child support obligations. Applicant's debts originated about 2009. The total amount of indebtedness is approximately \$70,000.

Applicant did not ignore his debts. He attempted a loan consolidation in 2013, but he had no success. His priority was his mortgage (SOR 1. j) and his child support. (AX D) His mortgage account is current. (GX 4) His child support in two states had been garnished. (AX D) One account is closed, as the child is emancipated. (SOR 1.k) The other child support amount (SOR1.l and SOR 1.p) is garnished in the amount of \$336 from his pay. (AX I) He paid what accounts that he could and prioritized them.

When Applicant obtained his full-time job in 2015, he slowly started the process of re-establishing with creditors. The following are paid: SOR 1.b (2012 tax lien in the

¹A telephone conference was held on April 7, 2016 with all parties to clarify the post-hearing submissions.

amount of \$3,724) AX A; SOR 1.c(gasoline account in the amount of \$28) AX B; SOR 1.e (energy account in the amount of \$74) AX C; SOR 1.f (collection account in the amount of \$146) AX R; SOR 1.h was settled for \$545 (AX EE); the cable account in SOR 1.q has been settled in the amount of \$210.81. (AX E); SOR 1.r in the amount of \$425 has been satisfied. (AX); SOR 1.s(collection account in the amount of \$139) has been paid in full. (AX F); SOR1.u (cell account in the amount of \$1,616) was settled. (AX C); SOR 1.w collection account for \$207 has been paid. (AX G); SOR 1.t in the amount of \$532 has been paid. (AX DD)

Applicant has payments plans for the following: SOR 1.d in the amount of \$4,543, which is a duplicate of 1.m. He has provided documentation that he has made a payment of \$78.49 that is for his auto loan. (AX V) Applicant has the account in SOR 1.g for \$5,913, in a payment plan. He made a payment of \$106 and provided documentation. (AX V)

As for the allegation in SOR 1.i, Applicant has a payment plan in place. He provided documentation that he has made two payments in the amount of \$75 each. (AX GG)

Applicant's former wife was responsible for the debt in SOR 1.o for \$3,760. She included that in her 2013 bankruptcy. (AX UU)

As to the accounts in SOR 1.a and SOR 1.n, they are duplicates. The amount is \$8,681. Applicant has a payment plan in place and has made a payment of \$100. (AX W)

SOR 1.v (collection account in amount of \$3,004) is in a payment plan. Applicant pays \$164.25 monthly. (AX BB)

Finally, Applicant disputes the account in SOR 1.x for \$140. He researched the debt with the insurance company. Applicant has a current account with this company. This account does not belong to Applicant. It is an account for another individual.

Applicant submitted a personal financial statement (PFS). (AX J) He and his wife are both employed. Applicant's net monthly income is \$3,069. His wife earns \$1,876 net income. They have a small venture for fund raising which sometimes provides an additional \$500. After expenses, Applicant has \$743. He listed on his PFS the various debts that he pays in his four payment plans. He has some bank savings and retirement account. (AX J) He has no new debts. He participated in a consumer credit counseling program. (AX H) He takes a class at his church that provides information on managing credit cards, eliminating debt, and staying focused on finances. (Tr. 87)

Applicant's minister states that he is a devoted family man and is actively involved in the church and the community. The minister recommends Applicant. (AX L)

A former employer wrote a letter of recommendation for Applicant. He states that Applicant worked as a consultant analyst from 2011 to 2013. The senior associate noted

that Applicant was well liked by both customers and colleagues. He received several awards for his exemplary service. He worked effectively with his team. (AX K)

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

applicant concerned.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant’s credit reports confirm delinquent debts, judgment, and collection accounts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant’s financial difficulties make it difficult to conclude that it occurred “so long ago.” Applicant still has significant debts that he is in the process of paying. He has paid some small debts in the SOR. His payment plans are recent. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) partially applies.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

responsibly under the circumstances) partially applies. Applicant had several bouts of unemployment or underemployment over the years. He did not obtain a steady full-time position until 2015, after he was unemployed in 2008. He was diligent in keeping his home and paying child support. He could have been more proactive but he did try to prioritize his accounts and he has now either paid, settled, or made recent payment arrangements for the debts.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has application. When Applicant was fully employed in 2015, he paid some small debts and had the garnishment for child support. He tried to consolidate debts as early as 2013 but did not have the financial resources. He has now paid bills and addressed all debts. FC MC AG ¶ 20(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) 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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 45 years old. He divorced and has five children. He has had sporadic employment as a contractor since losing a regular position in 2008. He made efforts to find work and has taken various temporary jobs. His unemployment and underemployment contributed to his financial problems. He provided sufficient information that he has paid or settled some debts. He is current with his mortgage and his child support is garnished by court order. He supported his family and kept his home. He has payment plans for the debts that he has not paid or settled. He will get an increase in pay if he obtains a job with a security clearance. He disputed one debt.

Applicant persuaded me that he refuted or mitigated the Government's case concerning the financial considerations security concerns. He has carried his burden of proof.

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 :	FOR APPLICANT
Subparagraphs 1.a-1x:	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. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge