



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



In the matter of:)	
)	
[Name redacted])	ISCR Case No. 15-01862
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Mary M. Foreman, Esquire, Department Counsel
For Applicant: *Pro se*

06/20/2016

Decision

HOGAN, Erin C., Administrative Judge:

On October 21, 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 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) effective within the DOD after September 1, 2006.

On November 12, 2015, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on January 11, 2016. Applicant received the FORM on January 14, 2016. Applicant had 30 days to submit a response to the FORM. He timely submitted a response to the FORM. (Item 11) Department Counsel did not object to his submission. (Item 12) On February 18, 2016, the FORM was forwarded to the Hearing Office and assigned to me on March 29, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Rulings on Evidence

Items 5 and 6 of the FORM are portions of the Report of Investigation (ROI) from the background investigation of Applicant. They are summaries of Applicant's Personal Subject Interviews conducted on September 16, 2013, and April 30, 2014. They are both unsworn and unauthenticated. DOD Directive 5220.6, Enclosure 3, ¶ E3.1.20 states, "An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence." (see ISCR Case No. 11-13999 (App. Bd., February 3, 2014)).

Although Applicant, who is representing himself, has not raised the issue via an objection, I am raising it *sua sponte* because Items 5 and 6 are not properly authenticated. While Department Counsel mentions the authentication requirement of ¶ E3.1.20 of the Directive in Footnote 1 of the FORM without directly citing it, I cannot conclude Applicant expressly waived this rule because he did not submit a response to the FORM. Waiver means "the voluntary relinquishment or abandonment – express or implied – of a legal right or advantage; the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." *Black's Law Dictionary*, 1717 (Bryan A. Garner, editor-in-chief, 9th ed., West 2009). In accordance with the Directive, Enclosure 3, ¶ E3.1.20, Items 5 and 6 are not admissible and will not be considered in this decision.

Findings of Fact

In his response to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.b, 1.d, and 1.e and denied the allegations in SOR ¶¶ 1.a and 1.c. (Item 2)

Applicant is an employee of a DOD contractor seeking to maintain his security clearance. He has worked for his current employer since April 2004 and currently holds a top secret security clearance. He has a high school diploma. He served on active duty in the U.S. Navy from 1993 to 1999. He divorced in November 2011 and has three children. (Item 3)

On August 9, 2012, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). In response to Section 26 – Delinquency Involving Routine Accounts, Applicant listed several delinquent accounts. (Item 3, section 26) A subsequent background investigation revealed the following delinquent accounts which are alleged in the SOR: a \$268,759 mortgage more than 180 days past due in the amount of \$14,759 (SOR ¶ 1.a: Item 5 at 1; Item 6 at 3); a delinquent computer account in the amount of \$2,977 that was placed for collection (SOR ¶ 1.b: Item 5 at 2; Item 6 at 4); a delinquent credit card account that was charged off in the amount of \$925 (SOR ¶ 1.c: Item 5 at 2); an \$83 medical account that was placed for collection (SOR ¶ 1.d: Item 5 at 2); and a \$2,200 judgment filed against Applicant in August 2009. (SOR ¶ 1.e: Item 5 at 3).

In his response to the SOR, Applicant provided the following information regarding the debts:

SOR ¶ 1.a: \$268,759 mortgage loan, delinquent more than 180 days in the amount of \$14,759: Applicant denies this debt. He believes there is an error on his credit report. This debt was related to a house that he and his wife owned that was sold in a short sale in 2010 after they divorced. He provided a copy of the settlement statement. The mortgage debt was resolved. (Item 2 at 3-6)

SOR ¶ 1.b: \$2,977 delinquent computer account placed for collection: Applicant admits this debt. He paid off the debt in full. (Item 2 at 2, 7)

SOR ¶ 1.c: \$925 charged-off credit card account: Applicant denies this debt. He contacted Capital One and they verified the only account Applicant has with them is the Capital One account alleged in SOR ¶ 1.e.

SOR ¶ 1.d: \$83 delinquent medical account: Applicant admits this debt. He paid off the debt in full. (Item 2 at 8)

SOR ¶ 1.e: \$2,200 judgment entered against Applicant in 2009 in the amount of \$2,200 for a delinquent credit card account. He paid off the debt in full. (Item 2 at 9-10)

In his response to the FORM, Applicant admits that his debts are unfortunate and embarrassing. All of the debts were incurred during a difficult period in his life. He also asserts two of the debts were not debts, but actually errors on his credit report.

From age 17 to 23, Applicant served in the Navy. He was deployed a majority of his time in the service. His wife would handle the finances. She was not good at managing the finances, and Applicant struggled with paying down the significant credit card debt that his wife incurred. In 2009, after 15 years of marriage, he and his wife separated. Being the product of multiple divorces, Applicant wanted to minimize the impact to his children. He rented a room and agreed to pay combined child and spousal support of 100% of his income. His wife maintained control of the household finances and he supported himself by working additional odd jobs. (Item 11 at 2)

In 2010, Applicant's wife decided to move to another state with the children and sell the family home. Applicant discovered that his wife was short-selling the house because she had not paid the mortgage for eight months. The short sale was approved. Applicant also discovered his wife had failed to pay utility and other bills. He paid them for her.

Applicant has not incurred any unmanageable debt in the past five years. The spousal support portion of his divorce settlement has ended and he has more income. He missed no rent payments or utility payments, and his credit card statements are paid in full. He has never missed a child support payment. He says he will be homeless before that happens. He was recently able to rent a three bedroom house so that his

children can come visit him for extended periods of time. He was able to pay his delinquent debts from money he had been saving for his daughter's college expenses. (Item 11 at 2)

Applicant admits that there was a failure to pay debts. He states he played a passive role about his wife's spending habits in order to keep a peaceful home for his children. He regrets that he did not pay the remaining delinquent accounts earlier. He is in control of his finances. He claims the pattern of financial irresponsibility stopped abruptly at the time of his separation and divorce. Applicant is grateful that he was able to maintain his clearance during the hardest years. He hopes to be allowed to maintain his clearance now that his financial situation has stabilized. (Item 11 at 3)

Policies

When evaluating an applicant's suitability for a security clearance, the 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, which must be considered when determining 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 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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.

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 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 relating to the guideline 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 disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant encountered financial problems during his marriage which were aggravated when he and his wife separated and eventually divorced in 2009. The SOR alleges five delinquent accounts. Both AG ¶19(a) and AG ¶19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government’s substantial evidence and Applicant’s admissions raised security concerns under Guideline F. The burden shifted to Applicant to produce

evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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);

AG ¶ 20(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);

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);

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts); and

AG ¶ 20(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).

AG ¶ 20(a) applies because Applicant's financial problems were caused during his marriage. It has taken Applicant several years to recover from his divorce. He has resolved four of the five delinquent accounts. The debt alleged in SOR ¶ 1.c appears to have been an error on his credit report. While Applicant has a history of financial problems, his financial situation is now stable. His past financial problems do not cast doubt on his current reliability, trustworthiness, and judgment.

AG ¶ 20(b) applies, because Applicant's financial problems were aggravated as a result of his 2009 separation and 2010 divorce. Applicant's ex-wife's spendthrift ways caused several delinquent accounts. Her refusal to make the mortgage payment on the family home for eight months, even though Applicant was giving her all of his salary, caused the home to be sold at a short sale. Applicant did not incur additional delinquent accounts after the divorce. It took him awhile to get on a solid financial footing. While he could have paid some of the delinquent accounts earlier, he was able to pay the debts

with the money he was saving for his daughter's college education. Applicant acted responsibly under the circumstances.

AG ¶ 20(c) applies because Applicant's financial situation is now under control. He is able to pay his debts and has resolved all of his delinquent accounts.

AG ¶ 20(d) applies because Applicant demonstrated that he made a good-faith effort to resolve his delinquent accounts. The debt alleged in SOR ¶ 1.a was resolved when Applicant's home was sold at a short sale in 2010. He paid the debts alleged in SOR ¶¶ 1.b, 1.d, and 1.e. He looked into the debt alleged in SOR ¶ 1.c and believes it was an erroneous entry on his credit report because the creditor informed him the only account that they had in his name was the judgment alleged in SOR ¶ 1.e. It took Applicant some time to resolve his delinquent accounts, but he was eventually able to do so.

AG ¶ 20(e) applies with respect to the debts alleged in SOR ¶¶ 1.a and 1.c. Applicant provided proof that the delinquent mortgage alleged in SOR ¶ 1.a was resolved by a short sale of the home. He contacted the creditor in SOR ¶ 1.c. and was told that they did not recognize that account and had only one open account in Applicant's name. Applicant did not provide documentation verifying this, but can formally dispute the entry on his credit report. If the credit reporting agencies verify the debt, Applicant is likely to resolve it based on his track record of paying his other delinquent accounts.

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 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.

I considered Applicant's service in the United States Navy and his 12 years of employment with a DOD contractor. While it took Applicant some time to resolve his

delinquent debts, he eventually resolved all of the delinquent accounts. The delinquent accounts were incurred at the time of Applicant's separation and divorce from his wife. To his credit, Applicant took steps to provide for his children to his personal financial detriment. His financial situation is now stable. The security concerns raised under financial considerations are mitigated.

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.e:	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.

ERIN C. HOGAN
Administrative Judge