



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



In the matter of:)	
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)	ISCR Case No. 14-03767
)	
Applicant for Security Clearance)	

Appearances

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

September 3, 2015

Decision

MOGUL, Martin H., Administrative Judge:

On October 27, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. (Item 1.) 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 (AG) effective within the Department of Defense after September 1, 2006.

On November 19, 2014, Applicant replied to the SOR (RSOR) in writing, and he requested that his case be decided on the written record in lieu of a hearing. (Item 2.) On May 19, 2015, Department Counsel issued the Department's written case. On May 21, 2015, a complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered five documentary exhibits. (Items 1-5.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on July 28, 2015. Applicant timely submitted several documents, including: a two page letter from Applicant, I have identified as Item A, a single letter from Applicant (Item B), a letter regarding Applicant's

student loans (Item C), a second letter regarding Applicant's student loans (Item D), and a receipt for proof of payment (Item E). All of the Items were admitted into evidence without objection. The case was assigned to this Administrative Judge on June 29, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 28 years old. He is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists three allegations (1.a. through 1.c.) regarding financial difficulties, specifically overdue debts totaling approximately \$23,000, under Adjudicative Guideline F. The debts will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for a collection account in the amount of \$21,923. In his RSOR, Applicant admitted this SOR allegation. He wrote that he has spent the last year bringing this debt for a student loan out of default, and as of July 30, 2014, this debt was in good standing. Item C, a letter from the manager for the creditor showed that Applicant's loan was rehabilitated on July 30, 2014, and his first payment was due on September 13, 2014. The final letter from the creditor's manager, dated May 28, 2015, establishes that Applicant made five monthly payments of \$127.32, and the total balance remaining is \$20,872.62. (Item D.) Item E established that Applicant's most recent payment was made on May 13, 2015, and his next payment will be due on June 13, 2015. I find that Applicant's student loan has been rehabilitated, and he is now responsibly making monthly payments according to the plan.

1.b. This overdue debt is cited in the SOR for a medical account in the amount of \$700. In his RSOR, Applicant admitted this SOR allegation, writing that this debt is being addressed. (Item 2.) I find that this debt is still outstanding, and Applicant must act responsibly to resolve this debt.

1.c. This overdue debt is cited in the SOR for a medical account in the amount of \$342. In his RSOR, Applicant admitted this SOR allegation, writing that this debt is also being addressed. (Item 2.) I find that this debt is still outstanding, and Applicant must act responsibly to resolve this debt.

Applicant wrote in his RSOR that his overdue debts were as a result of his pursuing a better education and health emergencies. (Item 2.)

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 are useful 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 over-arching 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 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, 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 as to obtaining a favorable clearance decision.

A person who applies 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.

Section 7 of Executive Order 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 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 conditions that could raise security concerns and could potentially apply in this case. Under AG ¶ 19(a), "an inability or unwillingness to satisfy debts," is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt which was unsatisfied for a period of time.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. Under AG ¶ 20(b), it may be mitigating where, "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." No evidence was furnished by Applicant as to the cause of these overdue debts. Therefore, I do not find that this mitigating condition is a factor for consideration in this case.

There is evidence that Applicant has initiated a good-faith effort to repay overdue creditors. I find that AG ¶ 20(d) is applicable since Applicant has rehabilitated his student loan, and he now has a history of several months making the required payments according to the payment plan. Therefore, I find Guideline F for Applicant.

However, Applicant has to continue making his monthly payments according to the plan and also resolve the other two overdue medical debts in a responsible manner if he wishes to retain his security clearance.

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):

