



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



In the matter of:)	
)	
[Redacted])	ISCR Case: 15-01175
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel
For Applicant: *Pro se*

April 19, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be delinquent on five debts in the total amount of \$58,731. He has resolved four debts and is making payments on the remaining account. Eligibility for access to classified information is granted.

Statement of the Case

On September 18, 2015, the Department of Defense 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; 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 September 1, 2006.

Applicant answered the SOR on November 13, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned me on January 7, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

January 20, 2016, scheduling the hearing for February 10, 2016. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 4, which were admitted without objection. Applicant offered Exhibits (AE) A through G, which were admitted without objection. Applicant testified. DOHA received the transcript of the hearing (Tr.) on February 19, 2016. The record was left open for Applicant to submit additional exhibits. Applicant presented additional exhibits marked AE H through AE N. Department Counsel had no objections to AE H through AE N and they were admitted. The record then closed.

Findings of Fact

Applicant is 32 years old. He has been employed with a Government contractor since 2014. He was unemployed from September 2013 through May 2014. He was on active duty with the Air Force from August 2005 through September 2013. He married in 2005, separated in 2011, and divorced in 2013. (GE 1; Tr. 29-30.)

The SOR alleged Applicant owes approximately \$58,731 on five delinquent financial obligations. In his Answer, Applicant admitted all of the SOR allegations, with clarifications. His debts are documented in the record credit reports dated April 12, 2014; August 19, 2015; and December 8, 2015. (GE 2; GE 3; GE 4.) After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant was alleged in SOR ¶ 1.a to be indebted to a cable company in the amount of \$192. Applicant paid this debt in October 27, 2015. This debt is resolved. (AE D; AE I; Tr. 21-22.)

Applicant was alleged in SOR ¶ 1.b to be indebted to a credit union for a charged-off debt totaling \$6,969. Applicant established a payment agreement with this creditor to resolve this debt through monthly payments of \$200, beginning in June 2013. He successfully made all required payments and as of February 2015, the balance of the debt had been reduced to \$3,100.96. (AE B; Tr. 23,35-38.) On February 29, 2016, Applicant paid the remaining \$3,100.96. (AE J.) This debt is fully resolved.

Applicant was alleged in SOR ¶ 1.c to be indebted on foreclosed home mortgage in the amount of \$41,964. Applicant testified that when he and his ex-wife separated in 2011, she remained living in this house. She promised to make the mortgage payments. He was not aware that she had defaulted on the mortgage until it was in foreclosure proceedings. He did not have the money to resolve the deficiency and the home was foreclosed upon. He produced a letter from this creditor indicating that there are no outstanding interests that were excluded from the foreclosure. This debt is resolved. (AE F; AE H; AE K; Tr. 23-26, 38-40.)

Applicant was alleged in SOR ¶ 1.d to be indebted on a delinquent vehicle loan in the amount \$9,540. This debt was for a repossessed vehicle. Applicant documented

that he has a payment agreement with this creditor to make monthly payments of \$469.76. He has successfully made three consecutive payments under this agreement and intends to continue making monthly payments under this agreement until this debt is resolved. (AE C; AE L; Tr. 26-28, 41.)

Applicant was alleged in SOR ¶ 1.e to be indebted to an insurance company in the amount of \$66. Applicant presented documentation that shows he resolved this debt in full on October 26, 2015. (AE A.)

Applicant attributes his delinquencies to his unemployment and divorce, outlined above. He testified that he has enough money left over at the end of the month to make payments on his remaining debt until it is fully resolved, without getting further into debt. He is committed to resolving his financial obligations. He has matured and now places great importance on financial solvency. He has custody of his 12-year old child and wants to be a good role model. (Tr. 45-48.)

Applicant's two supervisors, who wrote letters on Applicant's behalf, characterize him as a very hardworking, reliable, trustworthy individual, who is focused on his duties. Applicant is considered to be a tremendous asset to those that work with him. (AE N.)

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, 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant accumulated five debts in the total amount of \$58,731. These debts establish both a history of delinquencies and an inability or unwillingness to satisfy his obligations. The evidence raises security concerns under the above conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. I find the following two provide mitigation:

(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.

Applicant has addressed all of his five delinquent debts. Four are fully resolved and he is making payments on the fifth debt. He has shown a recent track record of making consistent payments. He can be trusted to continue to make his monthly payments on his remaining delinquency. His finances are under control and he has made a good-faith effort to repay his creditors. Applicant's indebtedness does not cast doubt on his current reliability, trustworthiness, or good judgment. The security concerns with respect to his financial delinquencies are mitigated. The above conditions 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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant left the Air Force in 2013. He was unemployed for approximately nine months after his separation. At that same time, he and his wife divorced. He is now responsible for his young son and has matured. He has worked hard to resolve his financial delinquencies. He acted responsibly by paying three delinquent debts and making payments on one other. He

