



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



In the matter of:)
)
) ISCR Case No. 14-05144
)
Applicant for Security Clearance)

Appearances

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

01/28/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On December 16, 2014, 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 (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 responded to the SOR on January 16, 2015, and requested a hearing before an administrative judge. The case was assigned to me on August 14, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 21, 2015, scheduling the hearing for September 15, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through S, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted an e-mail and documents that were marked AE T through W and admitted without objection. DOHA received the hearing transcript (Tr.) on September 23, 2015.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He has worked for his current employer since 2005. He served in the U.S. military from 1985 until he was discharged under other than honorable conditions in 1989. He seeks to retain his security clearance, which he has held for about ten years. He attended college for a period, but he did not earn a degree. He is divorced with two adult children, and he raised his ex-wife's child as if the child was his own.¹

The SOR alleges 11 delinquent debts, but the \$3,421 debt alleged SOR ¶ 1.c is a duplicate of the \$3,421 debt alleged SOR ¶ 1.h; the \$1,123 debt alleged SOR ¶ 1.d is a duplicate of the \$1,123 debt alleged SOR ¶ 1.e; and the \$854 debt alleged SOR ¶ 1.i is a duplicate of the \$1,599 debt alleged SOR ¶ 1.j. The eight non-duplicate delinquent debts total about \$20,000.

Applicant cosigned a car loan for his daughter in about 2007. She did not maintain the payments, and the car was repossessed in about 2009. The credit reports from November 2013 and September 2014 list the high balance on the loan as \$10,800, with \$7,243 past due, and a charged-off balance of \$7,243. This debt is alleged in SOR ¶ 1.a. Applicant was not contacted by the creditor after the repossession about how much was received in the sale of the car or about a deficiency balance owed on the account. He sought information from the creditor, and he disputed the debt with the credit-reporting agencies. A credit-reporting agency updated the information to reflect a zero balance. Applicant stated that the creditor recently informed him that \$7,243 was the deficiency balance on the loan. He stated that he intends to pay or settle the debt.²

SOR ¶ 1.b alleges a \$6,674 debt to an apartment landlord. Applicant admitted that he broke a lease when he moved back with his ill ex-wife to help her with the children. The debt is listed on the September 2014 credit report. Applicant stated that he had about three months left on a six-month lease, and the total amount owed for those three months was about \$3,300. He contacted the creditor to request information on the account (security deposit, when apartment leased again, etc.). The creditor did not provide the requested information. Applicant stated that he would pay or settle the debt if the landlord would provide an accounting. He disputed the account, and it is not listed on the August 2015 combined credit report.³

¹ Tr. at 16-17, 51; GE 1.

² Tr. at 24-27; Applicant's response to SOR; GE 2, 3; AE L, N.

³ Tr. at 27-31; Applicant's response to SOR; GE 3; AE L.

Applicant denied owing the duplicate \$3,421 debts alleged in SOR ¶¶ 1.c and 1.h, because he did not recall having the credit card from the bank. The collection company collecting the debt did not initially respond to his inquiries. He paid the debt on September 29, 2015.⁴

Applicant also initially denied owing the duplicate \$1,123 debts alleged in SOR ¶¶ 1.d and 1.e, because he did not recall doing business with the telecommunications company identified in the SOR. He settled the debt for \$561, which he paid on September 29, 2015.⁵

Applicant settled the \$488 medical debt (SOR ¶ 1.f) for \$285, which he paid on September 25, 2015. He paid the \$161 and \$215 medical debts (SOR ¶¶ 1.g and 1.k) in October 2015.⁶

Applicant denied knowledge of the \$854 department store credit card debt alleged in SOR ¶ 1.i. The November 2013 credit report listed the loan as closed and charged off, with a zero balance. The high credit is reported as \$854. It reported that the debt was sold to the collection company identified in SOR ¶ 1.j. The collection company reported the debt with a \$1,599 balance. He disputed the debt with the collection company. The credit card debt with the zero balance is listed on the September 2014 credit report and the August 2015 combined credit report, but the collection company account is not listed on either report.⁷

Applicant attributed his financial issues to his separation and divorce. He also indicated that his ex-wife may have opened accounts in his name without his knowledge. He paid several debts that were not alleged in the SOR. He has not received formal financial counseling, but he subscribes to two credit-monitoring services. There are no delinquent accounts with balances listed on his September 2015 credit report. He is able to pay his current bills, with a surplus to be used for emergencies and savings. He credibly testified that he is committed to paying all the debts that are his responsibility. He submitted documents attesting to his excellent job performance.⁸

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

⁴ Tr. at 32-37; Applicant's response to SOR; GE 2, 3; AE I, T, V.

⁵ Tr. at 37-38, 54; Applicant's response to SOR; GE 2, 3; AE D, E, T, U.

⁶ Tr. at 39-42; Applicant's response to SOR; GE 2, 3; AE R, T, W.

⁷ Tr. at 42-45; Applicant's response to SOR; GE 2, 3; AE L, S.

⁸ Tr. at 45-50, 53-54, 57; Applicant's response to SOR; AE A, B, F, G, L, M, O, T.

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, 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."

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 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 safeguard 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 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* EO 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:

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. The following are potentially applicable in this case:

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

Applicant had delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

Applicant attributed his financial issues to his separation and divorce. He also indicated that his ex-wife may have opened accounts in his name without his knowledge. He paid, settled, successfully disputed, or otherwise resolved almost all of the debts alleged in the SOR. He credibly testified that he is committed to paying all the debts that are his responsibility. I am convinced that he will continue his efforts to resolve any remaining financial problems. Financial concerns are mitigated under AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e).

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's stable work history and positive employment record.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

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.k:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge