



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



In the matter of:)
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-----) ISCR Case No. 14-06973
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)
Applicant for Security Clearance)

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro se*

02/09/2016

Decision

HOWE, Philip S., Administrative Judge:

On May 28, 2012, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On June 10, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) 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; 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 on September 1, 2006.

Applicant acknowledged receipt of the SOR on June 22, 2015. He answered the SOR in writing on July 13, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 7, 2015, and I received the case assignment on October 15, 2015. DOHA issued a Notice of Hearing on October 27, 2015, and I convened the hearing as scheduled on November 20, 2015. The Government offered Exhibits 1 through 8, which were received without objection.

Applicant testified and submitted Exhibits A through C, without objection. DOHA received the transcript of the hearing (Tr.) on December 3, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR Applicant denied the factual allegations in ¶ 1.a of the SOR. He admitted the factual allegations in ¶ 1.b of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 64 years old, married, and has two children from his first marriage and three stepchildren from his present marriage. They are all adults. Applicant is a truck owner and operator for a defense contractor. He operates the truck with his wife as a co-driver. He does not have a current security clearance. (Exhibit 5)

Applicant's SOR alleges two delinquent debts, one owed to a credit card company for \$286, and the second debt a tax owed to the federal Internal Revenue Service (IRS) for the 2008 tax year for \$35,881. The tax lien dates from 2011. He and his wife are jointly obligated on this tax debt. (Tr. 16, 29-40; Exhibits 6, 7)

Applicant claims he paid the credit card debt and it is not on his current credit report. The October 2015 credit report does not show this debt as an active account. This debt is resolved. (Tr. 17; Exhibits 6-8)

Applicant testified the tax debt is a debt he owes. He documented he has an installment payment agreement with the IRS and pays \$500 each month since 2011. The balance now owed is about \$9,600 according to his testimony and his Answer. He also disclosed the debt on his e-QIP. This debt is being resolved. (Tr. 16-40; Exhibits B, C, 5-8)

Applicant submitted a letter dated November 15, 2015, from the vice-president of the trucking company that employs Applicant. He stated Applicant has worked for his company since 2003. Applicant and his wife are rated as very professional drivers, making all appointments on time, and in full compliance with all federal, state, and Department of Defense rules and regulations while working. (Exhibit A)

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 the adjudicative process (AG ¶ 2(a)). 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. 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, an "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."

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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

Applicant accumulated \$35,881 in delinquent tax debt for tax year 2008 that apparently remained unpaid. His other debt was a credit card for \$286. Applicant has two delinquent debts listed in the SOR.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three conditions may be 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant paid the credit card debt some time ago. It is no longer on his credit record. The debt was of a small amount and incurred some time ago. It is now resolved and does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. The tax debt is being resolved by an installment payment agreement that Applicant follows regularly. AG ¶ 20 (a) is established.

There is clear evidence that the two delinquent debts listed in Applicant's SOR are paid or being paid on the monthly basis. The financial problem is being resolved and is under control. AG ¶ 20 (c) is established.

Applicant has paid or is paying on the installment basis the two debts alleged in the SOR. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay his delinquent debts.

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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant resolved his two debts in an orderly manner. He paid the credit card debt and is paying the tax debt. At the rate that debt is being paid, \$500 monthly plus the application of any income tax refunds, it should be totally resolved in 2016. Now less than \$5,000 is owed. There is no potential for pressure, coercion, exploitation, or duress. It is highly unlikely that the issue will be repeated. The current tax debt occurred six years ago and there has not been any repetition of that type of debt.

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

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	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

PHILIP S. HOWE
Administrative Judge