



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



In the matter of:)	
)	
)	ISCR Case No. 15-01131
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2016

Decision

WHITE, David M., Administrative Judge:

Applicant has one old charged-off joint credit card debt that was assigned to his ex-wife in their March 2009 divorce because she incurred the debt after their separation. The creditor has made no effort to collect from him, and has no record of this account or of any debt being owed by him. Resulting security concerns were mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on October 28, 2013.¹ On August 26, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² 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*

¹Item 2.

²Item 1.

Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on September 23, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on December 21, 2015. A complete copy of the File of Relevant Material (FORM)⁴ was received by Applicant on January 7, 2016, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted a written response to the FORM on January 18, 2016, in which he made no objection to the admissibility of any of the Items contained therein. Department Counsel initialed the block indicating, "I OBJECT," on the February 2, 2016 memorandum that forwarded Applicant's response to him for review. However, Department Counsel made no further statement that would identify or justify any basis for an objection. In the absence of any basis for the objection, which more likely than not was a simple scrivener's error, it is overruled and Applicant's response to the FORM is admitted into evidence as Exhibit (AE) A. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on March 1, 2016.

Findings of Fact

Applicant is 53 years old. He has worked as a security guard and security coordinator for a defense contractor since May 2007. He has held a security clearance throughout that employment, but has not served in the military. He earned a bachelor's degree in 1985, and a professional degree from a theological seminary in 1989. He is twice divorced, and has three children ages 24, 21, and 19.⁵

In his response to the SOR, Applicant denied the allegation in SOR ¶ 1.a. The account in question was a \$25,418 credit card debt. Applicant and his first wife had a joint account that was opened in May 2008, and which she exclusively used to make charges up to the \$25,000 limit after they separated. The responsibility for this debt was assigned to her in their March 2009 divorce decree. The account became delinquent in November 2009, and the creditor charged off the whole balance due in February 2010. Applicant's ex-wife subsequently filed for bankruptcy and the debt was discharged. The creditor never contacted Applicant to collect this debt, and a representative could find no record of it, or of any other debt owed by Applicant, when he contacted them. All record credit reports show that the last report of this debt was made in February 2010, and that there is no past-due balance.⁶

³Item 1.

⁴Department Counsel submitted six Items in support of the SOR allegations.

⁵Item 2.

⁶Item 1; Item 3; Item 4; Item 5; Item 6; AE 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 (DCs) and mitigating conditions (MCs), 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 under 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.

Department Counsel asserted that the record evidence raised security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant's explanation that the debt in question was solely incurred by his ex-wife, and was assigned to her by the divorce decree, is supported by consistent record evidence. While she used a joint credit card account to incur this debt, and subsequently defaulted on it, he neither benefitted from the funds involved nor ever exercised any control over the account. The creditor never sought to collect the debt from him, and last made entries in February 2010 on his credit report showing that the full balance had been charged off and no past-due balance remained. Applicant has no other alleged delinquencies, and the circumstances surrounding this particular debt are insufficient to raise legitimate security concerns under either of these DCs. No other Guideline F DC was established either.

The guideline includes five MCs in AG ¶ 20 that could mitigate any minimal security concerns that might be considered to arise from Applicant's financial situation:

- (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;
- (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;

(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's circumstances establish mitigation under AG ¶¶ 20(a), (b), and (c). The debt arose under unique circumstances during his first separation and divorce when his ex-wife used a joint account to run up debt for her own purposes. Applicant felt that he had no obligation with respect to this debt because his divorce decree assigned responsibility for it to his ex-wife. He inquired with the creditor about whether he was responsible for it, and was informed that they had no records that would indicate that to be the case. Although it was technically a joint account, and the divorce decree would not legally preclude the creditor from seeking payment from Applicant, they never pursued such a remedy. The problem is resolved, and all other indications show that his financial situation is under control.

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 pertinent facts and circumstances surrounding this case. Applicant's explanation for his conduct with respect to his ex-wife's accrual, and subsequent default, of the credit card

debt in question is reasonable, and reflects no serious doubt on his trustworthiness or reliability. His understanding was that he had no responsibility for the debt, and the creditor never sought payment from him. The potential for pressure, coercion, and duress from his financial situation is nonexistent, and recurrence of similar circumstances is unlikely. Overall, the record evidence leaves me with no doubt as to Applicant's present eligibility and suitability for a security clearance. He fully met his burden to mitigate the security concerns arising from the alleged 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

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.

DAVID M. WHITE
Administrative Judge