



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



In the matter of:)	
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)	
[Name redacted])	ISCR Case No. 15-01354
)	
)	
Applicant for Security Clearance)	

Appearances

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

05/24/2016

Decision

HOGAN, Erin C., Administrative Judge:

On September 14, 2015, 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 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 October 1, 2015, Applicant answered the SOR and requested a decision on the record in lieu of a hearing. Department Counsel issued a File of Relevant Material (FORM) on November 19, 2015. Applicant received the FORM on November 25, 2015. He had 30 days from the receipt of the FORM to submit matters in response to the FORM. He did not submit matters. On March 1, 2016, the FORM was forwarded to the Hearing Office and assigned to me on March 14, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his response to the SOR, Applicant admits the SOR allegation ¶ 1.a and denies SOR ¶¶ 1.b – 1.e. (Item 2)

Applicant is an employee of a DOD contractor seeking to maintain his security clearance. He has worked for his current employer since June 2014. He has an associate's degree. He is single and has no children. (Item 2)

On July 23, 2014, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). In response to Section 26, Applicant listed several delinquent accounts. (Item 3, section 26) Applicant resolved several of these debts and they were not alleged in the SOR. A subsequent background investigation revealed the following delinquent accounts which are alleged in the SOR: a \$9,308 debt owed to an apartment landlord for rent and damages placed for collection in 2008 (SOR ¶ 1.a: Item 4 at 6; Item 5 at 1); a \$138 medical account placed for collection (SOR ¶ 1.b: Item 5 at 2); a \$278 medical judgment filed in June 2008 for a dental bill (SOR ¶ 1.c: Item 4 at 4; Item 5 at 3); a \$493 account that was placed for collection (SOR ¶ 1.d: Item 4 at 7); and a \$139 account that was placed for collection. (SOR ¶ 1.e: Item 4 at 7).

In his answer to the SOR, Applicant admits to owing the \$9,308 debt (SOR ¶ 1.a) for an apartment that he leased with two friends shortly after he turned 18. The debt is for unpaid rent and damages to the apartment. He was willing to make arrangements to pay off the debt. A financial counselor advised him against paying the debt because it would be deleted from his credit report after seven years. He took the financial counselor's advice. He denied the debts alleged in SOR ¶¶ 1.b, 1.d, and 1.e because all of these debts are paid. Finally, Applicant denied the debt alleged in SOR ¶ 1.c because the dental bill did not belong to him. He and his family members had never resided in the county where the dental practice was located and where the judgment was entered. He disputed the debt and the judgment was removed from his credit report. Applicant provided a copy of a credit report, dated September 25, 2015, which indicates all of his accounts are current. (Item 1; Item 2, sections 11 and 26; Item 3)

Applicant resolved several delinquent debts that were not alleged in the SOR. In response to section 26 on his security clearance application, he listed a \$639 credit card debt, but indicated he paid it. The July 2014 credit report indicates he paid this credit card account, a \$238 debt owed to a bank, and a \$146 insurance account. All accounts had been placed for collection. Applicant also listed a \$230 medical account placed for collection on his security clearance application. I conclude Applicant resolved this account before the SOR was drafted. It no longer appears on his credit reports. (Item 2, Section 26; Item 4 at 7)

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 must be considered when determining 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. 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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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 notes several disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations) apply to Applicant's case. Applicant encountered financial problems since about 2008 when he was evicted from an apartment he shared with two friends. The apartment assessed \$9,308 for unpaid rent and damages. He also incurred several minor medical debts and an insurance debt, totaling \$1,048. Both AG ¶ 19(a) and AG ¶ 19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

AG ¶ 20(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);

AG ¶ 20(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);

AG ¶ 20(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);

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts); and

AG ¶ 20(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).

AG ¶ 20(a) applies because Applicant's largest debt, the debt owed to an apartment complex occurred over eight years ago. Applicant was an immature 18 year old when he and two friends leased an apartment together. He also incurred several minor debts. Since that time, Applicant has resolved most of his delinquent accounts. While not making good on his financial obligation to the apartment complex, he relied on the advice given to him by a financial counselor. Applicant has learned the importance of timely meeting his financial obligations while holding a security clearance and that any future financial issues will result in potential loss of his security clearance. For this reason, I believe it unlikely that Applicant will find himself in similar circumstances in the future.

AG ¶ 20(b) partially applies to Applicant's situation. Applicant's ultimate eviction from the apartment complex was partially caused by one roommate moving out of the apartment without giving notice, and one roommate losing his job. Applicant could not afford to pay the rent on his own. Circumstances beyond his control contributed to this situation. It is likely his former roommates were also liable for the debt owed to the apartment complex. AG ¶ 20(b) is given less weight because Applicant did not take steps to pay this debt. Applicant showed good judgment when he resolved his other delinquent debts.

AG ¶ 20(c) applies because Applicant's financial situation is stabilized and there are clear indications Applicant's financial situation is under control. Applicant states that he consulted a free credit counseling service over the telephone. He took steps to resolve his delinquent accounts and has no delinquent accounts on his current credit report.

AG ¶ 20(d) applies because Applicant demonstrated that he made a good-faith effort to resolve the delinquent accounts alleged in SOR ¶¶ 1.b – 1.e. While it cannot be concluded that Applicant made a good-faith effort with regard to his largest debt, SOR ¶ 1.a, he consulted a financial counselor who advised that the best approach for him financially would be to concentrate on his other debts and to let the statute of limitations pass on the debt. Passively waiting for the statute of limitations to lapse is not considered a good-faith effort to resolve one's debt.

AG ¶ 20(e) applies with respect to the \$278 medical judgment alleged in SOR ¶ 1.c. Applicant disputed this debt, because he had never sought the services of the medical provider, a dentist. He listed the debt in response to Section 26 of his security clearance application. He explained that he intended to dispute the debt because he had never been to this dentist. He had never been to the county where the dentist's practice was located, and none of his family members resided in the county where the dentist practiced. Applicant successfully disputed the debt with the credit reporting agencies. It is no longer on his most recent credit report.

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):

- (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 considered Applicant was young and immature when he was evicted from the apartment complex in 2008. I considered

Applicant's two roommates were equally responsible for the debt. More than seven years have passed and Applicant has matured and become more financially responsible. He resolved his remaining delinquent accounts. He followed the advice of a financial counselor and disclosed his intention to let the statute of limitations lapse. Ordinarily, I would have denied Applicant, but based on his efforts to resolve his other delinquent accounts, considering his age at the time the debt was incurred, that he sought financial counseling and followed the counselor's advice with regards to the debt alleged in SOR ¶ 1.a, I conclude Applicant has learned the importance of timely resolving his financial obligations. Should Applicant fail to honor his financial obligations in a timely manner and incur delinquent debts in the future, it is likely that he will lose his security clearance. At the present time, I conclude the security concerns raised under financial considerations are mitigated.

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.e:	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.

ERIN C. HOGAN
Administrative Judge