



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



In the matter of:)	
)	
)	ISCR Case No.: 15-01371
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

April 15, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant had one delinquent credit card debt totaling \$15,539. The debt was paid in full after the account was charged off. Resulting security concerns were mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Statement of Case

On March 6, 2014, Applicant submitted a security clearance application (e-QIP). On September 27, 2015, the Department of Defense (DOD) 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant responded to the SOR (Answer) on October 5, 2015. (Item 1.) He requested that his case be decided by an administrative judge on the written record without a hearing in his Answer. Department Counsel submitted the Government's written case on November 23, 2015. A complete copy of the File of Relevant Material (FORM), containing six Items, was received by Applicant on November 30, 2015. 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. He provided additional information in response to the FORM within the 30-day period, marked as Applicant's Exhibit (AE) A. Department Counsel had no objections to AE A, and it was admitted into the record. DOHA assigned the case to me on February 19, 2016.

Findings of Fact

Applicant is 73 years old. He has been employed with a Government contractor since 2010. He listed on his e-QIP that he served on active duty with the Army from 1973 to 1993. He married his wife in 1982, and has one stepchild and one child. He earned a bachelor's degree in 1999. (Item 2.)

The SOR alleged Applicant owed approximately \$15,539 in charged-off debt on a credit card. In his Answer, Applicant denied this debt. (Item 1.) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

In August 2010 Applicant entered into a debt relief program to resolve the credit card debt that he "incurred through living expenses, business travel and car rentals for business travels." The debt had become delinquent because he "endured the soaring interest rates on credit cards that plagued many Americans at that time." In October 2011 the creditor alleged in subparagraph 1.a agreed to accept \$1,668 as settlement in full on this debt, as documented in the Answer. Applicant paid that amount through the debt relief program and received a 1099-C cancelling the remaining balance. Applicant included that 1099-C in his 2013 Federal income tax return, as documented in his Answer. However, the three credit reporting entities continued to incorrectly report the debt as a charged-off account. (Items 4 through 6.) Applicant produced evidence he disputed the incorrect entries with all three credit reporting agencies and each has updated his credit report to reflect this debt as paid. While the language differs from agency to agency, this debt has been resolved, despite having been previously charged off. (AE A.)

Applicant has no additional delinquent accounts reflected on his most recent credit report. All other accounts are in good standing. (Item 4.)

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.

In 2010 Applicant became delinquent on the credit card alleged in SOR subparagraph 1.a. He hired a debt resolution program to assist him in the negotiation and repayment of this debt. That debt was resolved through a payment in 2013. The evidence raises security concerns under both conditions because Applicant's credit card debt went unresolved for at least two years, 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 provide mitigation:

- (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 experienced financial problems in 2010. He responsibly hired a debt relief program to help him resolve his delinquencies. He utilized its services to resolve the SOR listed debt and other accounts. His immediate action on his delinquent debt reflects good judgment, and financial delinquencies are unlikely to recur. His financial delinquencies are under control and his current credit report reflects all accounts are in good standing, but for the erroneous entry regarding the debt identified in SOR subparagraph 1.a. However, Applicant formally disputed the entry related to SOR subparagraph 1.a with each credit reporting agency, and he presented evidence that all three agencies have updated their records to reflect this debt is paid and finances are under control. AG ¶¶ 20(a), 20(c), 20(d), and 20(e) provide mitigation.

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 honorably served in the Army. He resolved his delinquent debt in 2013, but the credit reporting agencies continued to incorrectly report it as a charged-off account. Overall, the record evidence leaves me without doubt as to Applicant's present eligibility and suitability for a security clearance. He met his burden to mitigate the security concerns arising under the guideline for 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

Subparagraphs 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.

Jennifer I. Goldstein
Administrative Judge