



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



In the matter of:)
)
) ISCR Case No. 15-03251
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro Se*

06/07/2016

Decision

DAM, Shari, Administrative Judge:

Applicant began accumulating delinquent debts in 2012, after leaving military service and becoming unemployed. He mitigated the financial security concerns and refuted the personal conduct concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 4, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On November 6, 2015, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The action was taken under Executive Order 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) effective within the DoD for SORs issued after September 1, 2006.

On November 27, 2015, Applicant responded to the SOR (Answer), and requested a hearing. On February 12, 2016, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On February 16, 2016, DOHA issued a hearing notice, setting the case for March 2, 2016. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and offered Applicant Exhibits (AE) A through M into evidence. All exhibits were admitted without objections. The record remained open until March 25, 2016, to give Applicant time to submit additional information. Applicant timely submitted three exhibits, to which Department Counsel had no objection. I marked those exhibits as AE N, O, and P.¹ DOHA received the hearing transcript (Tr.) on March 14, 2016.

Findings of Fact

Applicant admitted the allegations contained in the SOR ¶¶ 1.a through 1.g, and denied those in SOR ¶ 2.a. His admissions are accepted as factual findings.

Applicant is 26 years old and single. He has earned about 100 college credits. Since September 2015 he has worked as a federal contractor. His annual salary is \$45,000. (Tr. 20-23.)

In October 2008, at the age of 18, Applicant enlisted in the military after graduating from high school. He received his first security clearance at that time. He was on active duty until March 2012, when he received an honorable discharge. His paygrade was an E-3. In April 2011, before his discharge, he received a Uniform Code of Military Justice Article 15 hearing and was charged with failure to train. He received 30 days of extra duty, and a suspended reduction in rank for six months. (Tr. 24-25.)

After his discharge Applicant was unemployed until May 2014. During that time he attended college and lived with his mother, who helped support him financially. (Tr. 30-31; GE 1.) In May 2014 he took a low-paying position with a private company. In May 2015 he started working as a consultant for a state department contractor and went to the Middle East in June for three months, where he earned \$7,000 a month. He left that position in August 2015. (Tr. 33, 39.)

Applicant explained that his financial problems started after his discharge from the military. While serving, he earned \$42,000 annually and received many benefits, including medical care and a housing allowance. Applicant used the GI bill for educational expenses, but it was not enough to cover all of his expenses and debts while he was unemployed. Through the GI bill, he received a monthly stipend of \$1,250, in addition to educational expenses. (Tr. 41-42, 66.)

¹ AE M and O are the same character references from Applicant's supervisor. AE N is a performance evaluation. AE P is an email from Applicant's supervisor transmitting the character reference.

In early 2014, Applicant learned that he had a child with a former girlfriend. The child was two years old and the mother sued him for child support. After confirming paternity, the court ordered Applicant to pay child support and arrearages from the date of the child's birth. In later 2014 the prosecuting attorney informed Applicant that he owed \$2,300 for the paternity action and the court ordered a garnishment of his wages for unpaid child support. At the time he was earning \$10 per hour, and working 25 to 30 hours a month while attending college. Applicant testified his net paycheck for two weeks was \$10 to \$15, after child support payments were deducted. (Tr. 35-39, 68.)

Based on credit bureau reports (CBR) from September 2014, October 2015, and February 2016, the SOR alleged seven delinquent debts totaling \$9,719, which accumulated between 2012 and 2014. Included in those debts are three medical bills that total \$4,043, one judgment, and three collection accounts. (GE 2, GE 3, GE 4.) The status of the SOR debts is as follows:

1. (SOR 1.a) The 2015 judgment for \$1,001 is unpaid. Applicant contacted the credit card creditor in August 2015. The company is unwilling to negotiate a payment plan. Applicant does not have the money to pay this debt in full. (Tr. 47-48.)
2. (SOR 1.b) The \$1,865 medical debt is unpaid. It relates to a 2013 emergency room visit for a medical condition, at which time Applicant did not have medical insurance to cover services either at non-Veterans Affairs (VA) hospitals or through the VA. He said he had applied for coverage when he left the service, but had not received confirmation that he was covered through the VA. (Tr. 48, 65.)
3. (SOR 1.c) The \$2,022 medical debt is unpaid. It relates to a 2013 emergency room visit for the same medical condition noted above, at which time he did not have medical insurance. Applicant stated that he paid other medical bills related to those visits, but has been unable to pay the larger bills. (Tr. 48-49.)
4. (SOR 1.d) The \$2,594 credit card debt is unpaid. Applicant said he has had difficulty locating the correct creditor, as it had been transferred to different collection agencies. (Tr. 49-50.)
5. (SOR 1.e) The \$1,930 debt relates to a bicycle he purchased while attending college and participating in its bicycling program. He said he made three payments to the original creditor in August 2015, who did not process them. It is unresolved. He has not formally disputed the account with the credit bureau because he is unfamiliar with the dispute process. (Tr. 52-53.)
6. (SOR 1.f) The \$156 medical debt was paid in August 2015. (Tr. 55; AE D.)
7. (SOR 1.g) The \$151 car insurance debt was paid in July 2015. (Tr. 56; AE L.)

Applicant explained that while working in the Middle East for three months, beginning in June 2015, he used his pay for his child support obligations, and to resolve other debts not alleged on the SOR. (Tr. 47.) In September 2015 Applicant completed payment on child support arrearages and became current. (AE C.) He repaid a \$2,000 loan from his mother; a \$2,000 loan from his girlfriend; a credit card debt of \$763; a cell phone bill of \$188; and his military star card balance of \$1,947. He also paid \$1,279 for an automobile loan, bringing it current. He said his student loans are current but deferred. (Tr. 69; AE A, AE E, AE G, AE L; GE 4.)

Applicant's net monthly income is \$2,558, after paying taxes and \$200 for child support. (Tr. 40.) His expenses are \$2,475. He has about \$80 remaining at the end of the month. (AE L.) He said that he intends to pay the outstanding delinquent debts when he has more money available. He received an offer for a much higher paying position with a defense contractor. (Tr. 70-71; AE I.)

When Applicant completed his e-QIP in September 2014, he did not disclose any of the delinquent debts alleged in the SOR. Applicant testified that he did not realize he had debts over 120 days delinquent. (Tr. 56.) During an investigative interview in December 2014, Applicant discussed a 2013 tax lien, and delinquent debts listed on his credit report. In response to the investigator's inquiry as to why he did not disclose that information, Applicant said he was unaware of the delinquent debts when he completed the e-QIP. He did not disclose the \$399 tax lien filed in July 2013 because he had paid it in October 2013 when he learned of it. He did not review his credit report before completing the e-QIP. (Tr. 50-51, 58-63.) In his response to the SOR, Applicant stated that he had no intention to be dishonest on the e-QIP (Answer).

Applicant's supervisor for the past eight months submitted a letter of recommendation. He stated that Applicant has worked on projects containing sensitive and classified information. He has found Applicant to be professional and respectful of privacy issues. He has no reason to question Applicant's trustworthiness. (AE M.) Applicant submitted his most current performance review. He received an overall rating of "exceeds expectations" from his manager. (AE N.)

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 (AG) 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.²

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.

Applicant's inability to satisfy financial obligations occurred between 2013 and 2015, and continues to date. The evidence is sufficient to raise both disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 20 provides conditions that could mitigate security concerns:

- (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.

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's delinquent debts began after he left military service in 2012 and no longer had a stable income or the benefits associated with service. Such problems are unlikely to recur given his current employment and the steps he has taken to slowly resolve his financial obligations. His reliability and trustworthiness in managing delinquent debts does not remain a concern. The evidence supports the application of AG ¶ 20(a).

Applicant provided evidence that the financial problems alleged in the SOR arose when he became unemployed in March 2012 and did not obtain full-time employment until May 2015, when he worked for a couple months for a state contractor. In early 2014 he learned that he had a child out of wedlock. Sometime later he began paying child support and arrearages, which affected his finances. This situation, in addition to a period of unemployment and the lack of medical insurance, were circumstances beyond his control that contributed to his financial difficulties. He provided some evidence that he took a high paying overseas position for three months in 2015 in an attempt to pay his debt. AG ¶ 20(b) has some application.

There is no evidence that Applicant sought credit or financial counseling. He has addressed two of the seven debts alleged, and several other debts not alleged in the SOR. He intends to address the remaining SOR debts as soon as he earns more money. There is evidence to conclude that his finances are coming under control, as a consequence of his good-faith efforts to resolve several debts. The evidence establishes mitigation under AG ¶ 20(c) and AG ¶ 20(d). He testified that he disputes the debt owed in SOR 1.e because he made payments on the debt; however, he did not submit sufficient information to corroborate his statement. The evidence provides minimal mitigation under AG ¶ 20(d).

Guideline E, Personal Conduct

The security concerns pertaining to the personal conduct guideline are set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Government alleged in SOR ¶ 2.a that Applicant deliberately falsified answers to financial questions on his September 2014 e-QIP, by failing to disclose a paid tax lien and debts more than 120 days delinquent. The Government contended that those falsifications constituted a potential disqualifying condition under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant acknowledged that he did not disclose his delinquent debts, but denied that he intentionally misled the Government. When a falsification allegation is controverted or denied, as in this case, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred.³ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant's explanation that he did not intentionally attempt to deceive the Government by not disclosing delinquent debts was credible. He stated that he was unaware that the debts were 120 days delinquent and he did not think he was required to disclose a paid tax lien. He proffered this explanation during an investigative interview in 2014, in his 2015 Answer, and while testifying. After listening to Applicant testify and observing his demeanor, I find that his consistent explanations for failing to disclose specific information as alleged in SOR ¶ 2.a are adequate and credible. Applicant successfully refuted the personal conduct security concern. SOR ¶ 2.a is found in his favor. As a consequence, a discussion of the applicability of mitigating conditions is not warranted.

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.

³ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

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 is an intelligent 26-year-old employee of a defense contractor, where he has worked since September 2015. He served in the military for four years, and held a security clearance during that time. He has gained the support and trust of his supervisor and manager based on his performance over the past eight months. His financial difficulties started in 2012 after he left the service. Although five of the seven SOR-alleged debts remain unresolved, Applicant provided proof that he resolved other financial obligations subsequent to leaving service. He used the money he earned in the summer of 2015 to resolve many outstanding bills and loans, and become current on his child support obligations. Applicant credibly indicates that he will pay the remaining debts, which total about \$9,000, as he earns more money.

In ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008), the Appeal Board noted:

That an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan.

After considering Applicant’s military service, his current job performance evaluation, the number of debts that he has resolved including child support, and the small amount of delinquent debt that is unresolved, there is nothing in the record that persuades me to conclude that Applicant is a security risk based on unpaid debts. While testifying, he was credible. I have no reason to believe he will not continue to resolve his delinquent debts. Overall, the record evidence leaves me without doubts as to Applicant’s present eligibility and suitability for a security clearance. Applicant met his burden to mitigate the security concerns arising under the guideline for financial considerations and refuted the security concerns for personal conduct.

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 to 1.g: For Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 2.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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge