



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



In the matter of:

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) ISCR Case No. 14-03873
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Applicant for Security Clearance

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

February 4, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be delinquent on five debts in the total amount of \$30,386. He has either resolved or is in the process of resolving each delinquency. 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 on December 11, 2013.¹ On January 15, 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). 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

¹Item 3.

adjudicative guidelines that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR, dated February 13, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing.² Department Counsel submitted the Government's written case on October 5, 2015, containing seven Items. A complete copy of the File of Relevant Material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant signed the document acknowledging receipt of his copy of the FORM on October 8, 2015. Applicant did not object to any of the Items submitted by the Government. Items 1 through 6 are admitted.

Item 7 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management in January 2014. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

Applicant submitted six pages of additional material in response to the FORM (Response). Department Counsel had no objections to Applicant's Response and it was admitted into the record. I received the case assignment on November 23, 2015.

Findings of Fact

Applicant is 55 years old, and has worked for a defense contractor since 2002. He served in the Navy from 1978 to 2002 and was honorably discharged. He is married, and has three adult children.³

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR alleged that Applicant is delinquent on five debts in the total amount of \$30,386. In Item 2, Applicant admitted the delinquent debts as set forth in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e. He denied the delinquent debt as set forth in SOR ¶1.c, because he claimed to have paid that debt. Applicant's delinquent accounts appeared on his credit reports, dated September 29, 2015, and January 8, 2014.⁴

²Item 2.

³Item 3.

⁴Items 5 and 6.

Applicant was indebted to a creditor in the amount of \$16,083, as alleged in SOR ¶ 1.a. He documented that he has a payment arrangement with a collection agent for this creditor to remit monthly payments of \$200. His current balance, at the time of his response, was \$14,162.19. Applicant is resolving this debt.⁵

Applicant was indebted to a creditor in the amount of \$8,137, as alleged in SOR ¶ 1.b. He established a payment agreement with this creditor to make monthly payments of \$200. His Response shows that his balance on this debt has decreased to \$6,287.70. He is resolving this debt.⁶

Applicant was indebted to a creditor in the amount of \$1,350, as alleged in SOR ¶ 1.c. His September 29, 2015 credit report reflects this debt as “paid.” This debt is resolved.⁷

Applicant is indebted to a creditor in the amount of \$2,150, as alleged in SOR ¶ 1.d; and \$2,666, as alleged in SOR ¶ 1.e. These allegations relate to the same debt. Applicant was originally indebted to the creditor in 1.d, and then that debt was placed for collection with the creditor identified in 1.e, as demonstrated in a letter from the collection agent. Applicant made payment arrangements with this creditor and as of September 28, 2015, his balance had been reduced to \$256. A payment of \$256 was debited from his bank account by this creditor on October 5, 2015. This debt is resolved.⁸

Applicant indicated that his debts were caused by his wife’s unemployment from February 2013 to October 2013. He presented a household budget that shows he now has a monthly remainder of \$1,895.⁹

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

⁵Response at page 3.

⁶Response at page 4.

⁷Response at page 1.

⁸Response at page 5.

⁹Response at pages 1 and 6.

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, and the record evidence established, 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 had a long history of delinquent debt. He accumulated five debts in the total amount of \$30,386, since 2013. His ongoing pattern of delinquent debt, and history of inability or unwillingness to pay his lawful debts, raised security concerns under DCs 19(a) and (c), and shifted the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

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

Applicant's debts became delinquent in 2013, when his wife was unexpectedly unemployed. Her unemployment was a circumstance beyond Applicant's control. He has acted reasonably and responsibly since that time by addressing all of his delinquent accounts. Two are fully resolved and he is making payments on two others. He has shown a recent track record of making consistent payments, demonstrated by the lower balances on the remaining two delinquencies. He can be trusted to continue to make his monthly payments on those debts.. His financial delinquencies are under control and he is making a good-faith effort to repay his creditors. Applicant's indebtedness does not cast doubt on his current reliability, trustworthiness, or good judgment. The security concerns with respect to his financial delinquencies are mitigated. The above conditions apply.

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 served in the Navy for 24 years. He has worked for a Government contractor for the past 14 years. He acted responsibly by resolving two delinquent debts and making payments on the other two. Overall, the record evidence leaves me with little doubt as to Applicant's present eligibility and suitability for a security clearance. He met his burden to mitigate 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

Subparagraphs 1.a through 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.

Jennifer I. Goldstein
Administrative Judge