



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



In the matter of:

ISCR Case No. 14-04302¹

Applicant for Security Clearance

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: Jacob T. Ranish, Esq.

March 17, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 39-year-old owner of a company that contracts with the Department of Defense. He is alleged to be indebted to two creditors in the approximate amount of \$55,451. The debts, which were caused by circumstances beyond his control, are now resolved. He has completed financial counseling. Additionally, security concerns were raised because Applicant failed to disclose his debt and foreclosure on his electronic Security Clearance Application (e-QIP). The omissions were unintentional. Eligibility for access to classified information is granted.

Statement of the Case

On April 24, 2013, Applicant submitted an e-QIP. On October 15, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of

¹ The case number was amended from 15-04302 to 14-04302 to correct a typographical error.

Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective September 1, 2006.

Applicant answered the SOR on November 12, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on January 19, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 21, 2016, scheduling the hearing for March 2, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant offered Exhibits (AE) A through M, which were admitted without objection. Applicant testified on his own behalf. The record was left open for Applicant to submit additional exhibits and on March 10, 2016, Applicant presented one additional exhibit marked AE N. Department Counsel had no objection to AE N and it was admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on March 10, 2016.

Findings of Fact

Applicant is a 39-year-old owner of a defense contractor, which he founded in approximately 2013. He previously worked for over eight years for another employer. In 2008 he injured his back on the job. The physically repetitive nature of his job made the pain worse. In 2009 Applicant left that job after his employer was unable to accommodate his injury. At the time he left his job, his credit score was very high and he had no delinquent debt. He made \$60,000 per year at that job. He was unable to work throughout 2010, because he was in a great deal of pain and focused on rehabilitation. He was unable to make ends meet during his rehabilitation and he became delinquent on several accounts, including his mortgage and a credit card that he used to support himself. He has since started his own government contracting business, and it is profitable. (GE 1; Tr. 18-26.)

The SOR alleged that Applicant was indebted to two creditors in the approximate amount of \$55,451. Applicant denied those debts in his Answer. He also denied falsifying his e-QIP by omitting his debts over 120 days delinquent and his foreclosure as alleged in subparagraphs 2.a and 2.b of the SOR. His debts are listed in the credit reports entered into evidence. (Answer; GE 2; GE 3; GE 4.)

SOR subparagraph 1.a alleged that Applicant was \$36,542 past due on a mortgage loan with an outstanding balance of \$309,546. This mortgage was for the condominium Applicant resided in at the time of his injury. It was foreclosed upon by the lender in February 2011, after Applicant defaulted on his payments. Applicant received an IRS Form 1099-A for this transaction, which indicated the fair market value of the property was \$283,100. It also indicated that Applicant was not personally liable for the repayment of his remaining mortgage debt. This debt is resolved. A separate home equity debt identified with this same property was "paid," as reflected on his October 2015 credit report. (AE A; AE H; Tr. 30-31.)

SOR subparagraph 1.b alleged that Applicant was indebted on a charged-off credit card in the amount of \$18,909. Applicant testified that this was the credit card he used to survive while recovering from his injury. He set up a payment agreement with this creditor prior to receiving the SOR. His final payment on this debt, in the amount of \$14,182.02, was made in September 2009. He received a letter from this creditor showing he had completed the terms of the settlement agreement on this debt. It is resolved. (AE B; AE B; AE G; Tr. 31-32.)

Personal Conduct security concerns arose out of Applicant's failure to disclose his foreclosure, identified in SOR subparagraph 1.a, and his delinquency over 120 days, as stated in SOR subparagraph 1.b, on his April 24, 2013 e-QIP. Section 26 of the e-QIP asked, "In the past seven (7) years, have you had any possessions or property voluntarily or involuntarily repossessed or foreclosed? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor.); and, "You are currently over 120 days delinquent on any debt?" Applicant answered the section that included both of these questions "Yes," and identified a delinquent home loan. He explained that he had never completed an e-QIP before and found it confusing. He did not know that he was required to itemize each debt and he thought he was being honest by answering, "Yes," to this section. He had no intent to deceive the Government about his past financial problems. (Answer; AE C; GE 1; Tr. 35-41.)

Applicant completed financial counseling in February 2016. His October 2015 credit report reflects that all of his accounts are either paid or in good standing. Applicant lives a modest lifestyle. He rents a condominium across the street from his office that he shares with his girlfriend. His rent is only \$800 per month. He now makes more than \$65,000 annually and his business is continuing to grow. He has approximately \$2,500 left over at the end of the month, after paying his monthly financial obligations. (AE L; Tr. 31-35, 41-43.)

Applicant presented several letters of recommendation that indicate Applicant is honest and trustworthy. His Navy counterpart indicated Applicant is "a trustworthy steward of the sensitive information that is inherently involved" in their joint mission. Applicant is an active volunteer in many organizations, including his local sheriff's office, where he aids in search and rescue missions. His past performance evaluations, for the period prior to his injury, reflect that he was an exceptional employee. (AE D; AE E; AE F; AE M.)

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 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, administrative judges apply the guidelines 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(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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 EO 10865 provides that adverse 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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.

Applicant became delinquent on two financial obligations totaling \$55,451 in 2009, after he left his job due to his back injury. His mortgage debt was resolved in 2011 through foreclosure. His delinquent credit card debt was not resolved until September 2015. The Government established that Applicant had a history of not meeting financial obligations from 2009 to 2015, which established a case for disqualification under Guideline F.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial obligations. The following are applicable:

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

Applicant's financial difficulties are unlikely to occur again and they do not cast doubt on his current reliability, trustworthiness, or good judgment. He was unable to continue in his line of work after suffering a debilitating back injury that was aggravated by his daily duties. He required rehabilitation before he was able to work again. Slowly, he repaid all of his debts and has built a successful business. He has completed financial counseling and plans to avoid debt in the future. He has a significant monthly remainder. Mitigation under AG ¶¶ 20(a), 20(b), 20(c), and 20(d) was established.

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline is 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 failed to identify his SOR-listed foreclosure and credit card debt on his e-QIP. However, his omissions were not intentional. He answered "Yes" to the question that asked about both foreclosures and debts over 120 days delinquent, placing the Government on notice that Applicant had experienced financial problems. Applicant misunderstood the level of detail required on the e-QIP and was confused by the form. It was the first time he had ever completed an e-QIP. His testimony that he unintentionally omitted his foreclosure and credit card debt was credible and those omissions do not raise a security concern.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected by those that know him. His financial difficulties are largely attributable to his back injury and unemployment during his rehabilitation. He has acted responsibly by repaying his debts. He is active as a volunteer in his community and is a successful entrepreneur. There is little likelihood of recurrence.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations and Personal Conduct security concerns.

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
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Subparagraph 1.a:	For Applicant
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Subparagraph 1.b:	For Applicant
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Paragraph 2, Guideline E:	FOR APPLICANT
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Subparagraph 2.a:	For Applicant
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Subparagraph 2.b:	For Applicant
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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