



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04508

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

January 20, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On November 26, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E for Applicant. 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) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On January 13, 2015, Applicant replied to the SOR (RSOR) in writing with attachments, and he requested a hearing in this case before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 20, 2015, and I convened the hearing by video teleconference, as scheduled, on May 21, 2015. The Government offered Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf and submitted Exhibits A and B, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on June 1, 2015. The record was kept open until June 5, 2015, to allow Applicant to

submit additional evidence. The documents that were timely received have been identified and entered into evidence without objection as Exhibits C and D. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

After a complete and thorough review of the evidence in the record discussed above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 27 years old. He is unmarried, and he has no children. He has an Associate of Arts degree in Computer Systems. Applicant is employed as a Computer Technician by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists four allegations, 1.a. through 1.d., regarding financial difficulties, specifically delinquent debts of Applicant.

1.a. The SOR alleges that Applicant has an overdue debt to Creditor A for a charged-off account in the approximate amount of \$17,310. Applicant admitted this allegation in his RSOR.

1.b. The SOR alleges that Applicant has a second overdue debt to Creditor A for a charged-off account in the approximate amount of \$14,537. Applicant admitted this allegation in his RSOR. All three CRs establish that this debt is still overdue and has not been resolved. (Exhibits 3, 4, and 5.)

1.c. The SOR alleges that Applicant has a third overdue debt to Creditor A for a charged-off account in the approximate amount of \$3,434. Applicant admitted this allegation in his RSOR.

Applicant testified that all three debts to Creditor A, listed above as 1.a. through 1.c., are student loans that were incurred in June 2006 when he began his college education. Applicant contended that all three of the loans are current at this time. He stated that he contacted the creditor and worked out a payment plan, where the amount he would owe would be \$14,491.87 and he would make a first payment of \$3,000 and a second payment of \$3,060.17. After those two payments, he would make payments of \$843.17 for 10 additional months. (Tr at 28-30.) Exhibit A establishes that Applicant has the settlement plan with the creditor as he testified.

Applicant further testified that by the time of the hearing, he had made the first payment of \$3,000 on December 29, 2014, and the second payment of 3,060.17 was made on January 30, 2015. Applicant has also made three monthly payments of \$843.17, and he has seven payments left. (Tr at 30-31.)

Applicant explained that he fell behind on his payments because he was either unemployed or underemployed after he finished school. His current job has been his first opportunity to have sufficient income to resolve his overdue education loans. Applicant also confirmed that he plans to continue making payments on the loan until it is resolved. (Tr at 32-35.)

1.d. The SOR alleges that Applicant has an overdue debt to Creditor B for a medical account in the approximate amount of \$51. Applicant admitted this allegation in his RSOR.

Applicant testified that this debt was incurred when he went to the hospital for a medical emergency and the \$51 has been paid. (Tr at 35-38.) Exhibit B shows that this creditor received a payment of \$150 on May 31, 2015.

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, lack of candor, dishonesty or unwillingness to comply with rules and regulations.

2.a. It is alleged in the SOR that Applicant failed to provide truthful and candid answers to Questions asked under section 26 of an Electronic Questionnaires for Investigations Processing (e-Quip), executed by him on April 23, 2013. (Exhibit 1.) The questions asked whether in the last seven years Applicant had been over 120 days delinquent on any debt. It also asked if Applicant is currently over 120 days delinquent on any debt. Applicant answered, "No," to these questions and listed no debts. It is alleged that Applicant deliberately failed to disclose that information concerning his finances and overdue debts as set forth in paragraph 1.a., above.

In his RSOR, Applicant denied this allegation. During his testimony, Applicant stated that because of mistakes, he had to complete his e-Quip four times before it all came out right. He credibly averred that he never meant to mislead the Government about his finances or anything else when he was completing the e-Quip. (Tr at 40-42.)

Mitigation

Applicant submitted two extremely positive character letters on his behalf. (Exhibit C.) One of the letters was from an individual who has helped Applicant formulate a plan to resolve his delinquent debts. He wrote that Applicant has been living a conservative lifestyle with a functional budget so he could pay off his debts.

Applicant also submitted a current Personal Financial Statement. (Exhibit D.) It shows that Applicant has a good handle on his income and his expenses so that his finances should remain in control.

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 useful 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 the adjudicative process. The administrative judge's over-arching 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. 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, 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

Paragraph 1 (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 conditions that could raise security concerns and could potentially apply in this case. Under AG ¶ 19(a), "an inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant had accumulated significant delinquent debt on three overdue student loans.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties: Under AG ¶ 20(b), it may be mitigating where "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." Applicant's overdue finances occurred as a result of periods in his life where he was either unemployed or underemployed. I find that Applicant has acted responsibly because he has contacted the creditor for the education loans and has set up a payment plan. Applicant is meeting his responsibility under the plan. Therefore, I find that this mitigating condition is a factor for consideration in this case.

I also find that because Applicant has been paying off the first three debts listed on the SOR and has paid off the fourth debt, AG ¶ 20(d) is applicable as Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

I conclude that at this time Applicant has reduced or resolved his overdue debts. Therefore, Applicant has mitigated the financial concerns of the Government, and I resolve Guideline F for Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgement, 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 alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, lack of candor, and dishonesty. In reviewing the disqualifying conditions under Guideline E, I conclude that while Applicant should have been more careful in completing his eQuip, there was no “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” by Applicant, because he testified credibly that he did not mean to mislead the Government. I find that any incorrect information about his finances was due to mistakes in completing the form rather than a wilful desire to mislead the Government. I do not find disqualifying condition ¶ 16(a) or any other disqualifying condition applies in this case against Applicant. I, therefore, resolve Guideline E for Applicant.

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. Based on all of the reasons cited above as to why the mitigating conditions apply under Guidelines F and E, I find that the record evidence leaves me with no significant questions or doubts as to Applicant’s eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns under the whole-person concept.

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.d.:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge