



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



In the matter of:

ISCR Case No. 14-05261

Applicant for Security Clearance

Appearances

For Government: Jeff Nagel, Esq., Department Counsel

For Applicant: *Pro se*

August 26, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was delinquent on five debts, in the total amount of \$33,778.79. He resolved four of his debts, and is making payments on his remaining tax debt. He has filed his 2011 and 2013 Federal income tax returns. The delay in the filing of those returns was unintentional. He has mitigated the Financial Considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On February 14, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On March 5, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 (AG) effective September 1, 2006.

Applicant answered the SOR on March 26, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on June 16, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 19, 2015, scheduling the hearing for July 10, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on his own behalf, called three witnesses, and presented Applicant Exhibits (AE) A through C. Department Counsel had no objections to AE A through C, and they were admitted into the record. The record was left open for Applicant to submit additional exhibits until August 14, 2015. On August 3, 2015, Applicant presented eleven additional exhibits, marked AE D through N. Department Counsel had no objections to AE D through N and they were admitted into the record. The record closed as scheduled. DOHA received the transcript of the hearing (Tr.) on July 20, 2015.

Findings of Fact

Applicant is 55 years old. He is employed by a Government contractor. He served in the Marine Corps for 20 years and honorably retired as a master sergeant, E-8, in 2003. He has held a security clearance for approximately 30 years without incident. He is married and has two children with his wife. He also has two adult children from a previous marriage. His adult sons both have served in the Marine Corps. (GE 1; Tr. 24-25, 70-72.)

The Government alleged that Applicant is ineligible for a clearance because he has 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 \$33,778.79; and failed to file his Federal tax returns for the tax years 2011 and 2013. In his Answer, Applicant admitted to SOR allegations 1.e and 1.f, but denied SOR allegations 1.a through 1.d. The alleged debts were also listed on credit reports dated February 27, 2014; June 8, 2015; and July 10, 2015. (GE 3; GE 4; GE 5.)

Applicant was alleged to be indebted on an all-terrain vehicle loan in the amount of \$15,000. Applicant paid this debt in full in August 2013, as documented in a letter from this creditor. Applicant's wife provided a letter in which she formally disputed the delinquency as listed on Applicant's February 27, 2014 credit report, and it no longer appears on Applicant's credit report. This debt is resolved. (GE 3; GE 5; AE B; AE F; Tr. 29-30, 37-38.)

Applicant was indebted on a medical account on the amount of \$369. Applicant testified that this debt was the result of an emergency appendectomy. His medical bills were covered by his insurance, but he received a bill for the meals he was served while in the hospital. Applicant objected to the unreasonable charges for meals and contested the debt. However, his wife resolved this debt in full as documented in a July 14, 2015 letter from this creditor. (GE 3; AE G; Tr. 38-39, 73.)

Applicant was indebted on a medical debt totaling \$100. Applicant's wife contacted this creditor to repay the debt, but was told the account was "withdrawn" and the creditor would not accept payment. As a result she filed a written dispute with the credit reporting agency. This debt no longer appears on Applicant's credit report. It is resolved. (GE 3; GE 5; AE B; Tr. 38-39.)

Applicant was indebted to a collection agent for a store credit card in the amount of \$4,369. Applicant's most recent credit report, dated June 8, 2015, reflects this debt as "paid and closed." (GE 4; AE H; Tr. 40-41.)

Applicant paid off his \$8,203.71 delinquency for tax year 2013 on February 3, 2015, according to his Internal Revenue Service (IRS) account transcript. He entered into an installment agreement to repay his 2010 and 2012 Federal tax delinquencies on April 12, 2014. He provided statement showing that he has made regular monthly payments under that agreement since April 2014. His Federal tax delinquencies are being resolved. (AE A; AE I; AE J; Tr. 46.)

Applicant failed to file his 2011 and 2013 Federal tax returns when due. However, his failure to meet the deadline to file was unintentional. In 2011 he used the services of a tax preparer. That tax preparer filed Applicant's Federal income tax returns in a timely manner, but due to a mistake with the social security number of one of Applicant's children, the return was rejected. Applicant was not notified by the tax preparer in a timely manner that the return was rejected. As soon as Applicant learned the return was rejected, it was refiled properly, albeit late. Similarly in 2013, another tax preparer filed his Federal tax return one day late. His account transcripts reflect tax returns for 2011 and 2013 have been filed. (GE 2; AE C; AE K; Tr. 30-34, 41-45.)

Applicant's facility security officer (FSO), his wife, and a lieutenant colonel who acts as Applicant's military supervisor, testified on Applicant's behalf. They all spoke of Applicant's excellent work ethic and his trustworthiness. His FSO noted that around matters of national security, Applicant is extremely detailed. The lieutenant colonel, who has known Applicant for 15 years, stated, "Without a doubt, I can say that [Applicant] would never do anything to jeopardize national security." (Tr. 68.) Applicant's wife detailed his community service and dedication to his job and family. Applicant also introduced three highly complementary reference letters into evidence. Among his many awards and decorations, he has been awarded the Meritorious Service Medal; three Navy and Marine Corps Commendation Medals; two Navy and Marine Corps Achievement Medals; six Marine Corps Good Conduct Medals; and eight Sea Service Deployment Ribbons. (AE D; AE E; AE L; AE M; AE N; Tr. 35, 59-67.)

Applicant's wife testified that they have completed financial counseling offered through their church. They now have minimal debt. They monitor their credit through a credit reporting service. Their vehicles are paid for and their only large debt is their mortgage. Applicant recently fell 30 days delinquent on that mortgage when his wife became ill with an autoimmune deficiency disorder, but they have since made a payment on that delinquency. They have no other unresolved debts. They are also consulting with a financial advisor to learn ways to reduce debts and save for

emergencies. While they do not have much left over at the end of the month after paying their bills, they are committed to resolving their remaining tax debt and put any extra monthly funds towards those payments. (Tr. 49, 51-56.)

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(a) 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 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, 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 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:

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 under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant was indebted to four creditors and the IRS in the amount of \$33,778.79, including almost \$14,000 for his 2010 and 2012 Federal income taxes. The evidence is sufficient to show a history of indebtedness and an inability to satisfy his debts. His failure to file his 2011 and 2013 Federal income tax returns was inadvertent, but technically raises a security concern within the letter of the guideline.

The Financial Considerations mitigating conditions under AG ¶ 20 that are potentially applicable are:

- (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's financial delinquencies are resolved or are being resolved in good faith. He filed his taxes, contacted all of his consumer creditors, paid the creditors that would accept payment, and successfully disputed the remaining delinquent consumer debts on his credit report. He is repaying his Federal tax obligation through an installment plan and is current on that repayment plan. Applicant and his wife have participated in financial counseling through their church. Their debts are under control and are unlikely to become delinquent in the future. They now monitor their credit report closely. All of the above mitigating 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 all of the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has acted responsibly with respect to his debts. He is highly respected by his superiors, wife, and colleagues for his integrity and trustworthiness. He performs well at work. He served honorably in the Marine Corps for 20 years and has held a security clearance for approximately 30 years, without incident. No new delinquencies have been incurred. He has sufficient income to satisfy his monthly obligations, including his payment agreements with his remaining creditors. He has taken financial counseling to help him learn how to responsibly manage debt in the future.

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

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge