



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



In the matter of:)
)
) ISCR Case: 14-06128
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

December 10, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 30-year-old employee of a defense contractor. As listed in the SOR, Applicant was alleged to be delinquent on nine debts in the total amount of \$34,622. One delinquency was forgiven by the creditor; he is making payments on four accounts; and he has formally disputed the remaining four accounts. Eligibility for access to classified information is granted.

Statement of the Case

On March 9, 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 April 6, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on July 16, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 17, 2015, scheduling the hearing for September 3, 2015. The case was rescheduled due to unavailability of a court reporter. An amended notice of hearing was issued September 8, 2015, rescheduling the hearing for September 30, 2015. The hearing was convened as scheduled via video teleconference between Woodland Hills, California and Honolulu, Hawaii. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered Exhibit (AE) A through AE L, which were admitted without objection. Applicant and three witnesses testified. DOHA received the transcript of the hearing (Tr.) on October 10, 2015. The record was left open for Applicant to submit additional exhibits. Applicant presented additional exhibits marked AE M through AE T. Department Counsel had no objections to AE M through AE T and they were admitted. The record then closed.

Findings of Fact

Applicant is 30 years old. He has been employed with his current employer, a Government contractor, since August 2012. He is divorced from his first wife and engaged to marry a second woman. He and his fiancée are expecting their first child together. (GE 1; AE B; Tr. 33.)

The SOR alleged Applicant owes approximately \$34,622 on nine delinquent financial obligations. In his Answer, Applicant denied SOR allegations 1.a through 1.i. However, his debts are documented in the record credit reports dated August 24, 2012; October 29, 2014; February 3, 2015; and July 8, 2015. (GE 3; GE 4; GE 5; GE 6.) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant attributes his financial difficulties to a 2010 divorce, several periods of unemployment, and the unexpected medical problems of his fiancée's daughter. He was unemployed from September 2008 through December 2008 and March through October 2011. Applicant's fiancée's daughter suffered a medical condition that required expensive, out-of-state treatment in 2014. He testified that he now has enough income to satisfy his expenses and repay his debts. He enlisted the help of a debt management company and will continue to resolve his debts through his debt management plan until all of his valid delinquencies are resolved. He has completed financial counseling and his household utilizes a budget for expenses. (GE 1; AE B; AE E; AE F; AE G; Tr. 30, 63-65.)

Applicant contacted a debt management company in April 2015. They created a plan for Applicant to pay \$594 per month to the debt management company. The debt management company then negotiated payment agreements with each of Applicant's creditors. From June through September, Applicant successfully made his monthly payments under this plan. In October 2015, Applicant revised the debt management

plan to include additional debts, which he had previously contested. He now pays \$721 monthly to the debt management plan. He intends to continue making his monthly payments to the debt management company until all of his delinquencies are resolved. His budget allows him to make this higher payment and still have a monthly remainder. (AE C; AE E; AE F; AE G; AE T; Tr. 44.)

Applicant was alleged in SOR ¶ 1.a to be indebted on a delinquent auto loan in the amount of \$9,579. This debt is enrolled in Applicant's debt management plan. Payments of \$191 per month are sent to this creditor out of Applicant's debt management plan account. This debt is being resolved. (AE D; AE F; AE T; Tr. 43.)

Applicant was alleged in SOR ¶ 1.b to be indebted on a delinquent account in the amount of \$8,522. This debt was a credit card in the name of Applicant's father. Applicant's father listed Applicant as an authorized user on the account, but Applicant was not the responsible party. Applicant's father discharged this debt through bankruptcy. Applicant contacted the creditor and was told the debt was discharged. Following the advice of the creditor, he contacted the credit reporting agencies in writing and disputed this debt. He presented a copy of the dispute he filed. (AE D; GE 6; AE F; AE Q; AE R; AE I; AE L; Tr. 46-48, 58-60.)

Applicant was alleged in SOR ¶ 1.c to be indebted on a delinquent account in the amount of \$7,210. This debt is enrolled in Applicant's debt management plan. Payments of \$183 per month are sent to this creditor out of Applicant's debt management plan account. This debt is being resolved. (AE D; AE T; Tr. 50.)

Applicant was alleged in SOR ¶ 1.d to be indebted on a delinquent credit card account in the amount of \$6,243. This debt was enrolled in Applicant's debt management plan. However, the creditor recently issued Applicant a 1099-C Cancellation of Debt on this account. As a result, it has been removed from his debt management plan. This debt is resolved. (AE D; AE F; AE T; Tr. 50.)

Applicant was alleged in SOR ¶ 1.e to be indebted on a delinquent account in the amount of \$1,218. This debt is enrolled in Applicant's debt management plan. Payments of \$31 per month are sent to this creditor out of Applicant's debt management plan account. This debt is being resolved. (AE D; AE T; Tr. 50.)

Applicant was alleged in SOR ¶ 1.f to be indebted on a delinquent account in the amount of \$115. This debt was associated with a rental property Applicant previously lived in. He contacted the property management group and was told they did not have any record of the debt. Applicant filed a written dispute of the debt with the credit reporting agencies. He is willing to repay this debt but the creditor told him he owes nothing. (Tr. 50, 55.)

Applicant was alleged in SOR ¶ 1.g to be indebted on a delinquent account in the amount of \$1,121. Applicant disputed this debt with the crediting reporting agencies after

he contacted the creditor and was told they have no record of a delinquency. (Tr. 51, 55-56.)

Applicant was alleged in SOR ¶ 1.h to be indebted on a delinquent credit card account in the amount of \$304. Applicant disputed this debt with the crediting reporting agencies after he contacted the creditor and was told they have no record of a delinquency. (Tr. 51-52, 56.)

Applicant was alleged in SOR ¶ 1.i to be indebted on a delinquent account in the amount of \$310. This debt is enrolled in Applicant's debt management plan. Payments of \$27 per month are sent to this creditor. This debt is being resolved. (Tr. 52, 58.)

Applicant's administrative lead and team lead testified on his behalf. They are aware of Applicant's financial issues. Applicant's team lead speaks highly of Applicant's skills and has no questions about Applicant's trustworthiness or honesty. Applicant also presented letters of recommendation from friends and co-workers, who attest to Applicant's integrity and work ethic. Applicant has been awarded numerous certificates of achievement and professional training. (AE A; AE H; AE K; Tr. 35-40.)

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 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.

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 accumulated nine debts in the total amount of \$34,622. These debts establish both a history of delinquencies and an inability or unwillingness to satisfy his obligations. The evidence raises security concerns under the above conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. I find the following provide mitigation:

(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.

Applicant's financial problems arose out of his divorce, unemployment, and treatment of his fiancée's daughter's illness. He addressed all of his delinquent debts either through his debt management plan or through a formal dispute after initiating contact with the creditor to arrange repayment in a responsible, albeit recent, manner. He is making payments on four of the SOR alleged debts, ¶¶ 1.a, 1.c, 1.e, and 1.i. He listed his debt in ¶ 1.d with the debt management firm, but it was fully forgiven by the creditor. He formally contested the debts listed in SOR ¶¶ 1.b, 1.f, 1.g, and 1.h. He has shown a recent track record of making consistent payments through his debt management plan since April 2015. He can be trusted to continue to make his monthly payments on his remaining delinquencies. He is willing to make payments on the disputed debts if he is found to owe them after the disputes are resolved. He has received financial counseling and created a budget. His financial delinquencies are under control and he is making a good-faith effort to repay his creditors, who are willing to accept payments. 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.

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 highly regarded by his coworkers and colleagues. His financial problems arose out of circumstances that he could not control. His recent efforts to address his debts show that he now utilizes sound financial practices, learned through financial counseling. He is unlikely to incur delinquent accounts in the future. Overall, the record evidence leaves me without doubt as to Applicant's present eligibility and suitability for a security clearance. He met his burden to mitigate the security concerns arising under the guideline for 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.i: 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