



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



In the matter of:)	
)	
)	ISCR Case No. 18-02381
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

02/25/2019

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F, financial considerations. He provided sufficient documentation to establish future financial problems are unlikely. National security eligibility for access to classified information is granted.

Statement of the Case

On October 19, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implemented June 8, 2017.

Applicant submitted an Answer to the SOR on November 5, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted its file of relevant material (FORM) on December 3, 2018. Applicant received it on January 2, 2019. The Government's evidence is identified as Items 1 through 6. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted his response to the FORM (Response) within the time period allotted. Items 1 through 6 and Applicant's Response are admitted into the record. The case was assigned to me on February 11, 2019.

Findings of Fact

Applicant admitted all of the allegations in the SOR, with clarifications. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 48 years old and married. He has two adult stepdaughters, who reside with him and his wife. Applicant has worked for his current employer since 2016. He is indebted to three creditors for over \$24,000 in delinquent debt as listed in the SOR. (Item 5; Item 6.)

Applicant attributes his financial difficulties to being laid off in May 2010. He presented documentation that showed at the time of the layoff, he earned \$174,292 annually. When he found a new job, his salary decreased to \$74,115 annually. Additionally, at the time he was laid off, he was repaying a loan he had received from his 401(K) account. After the layoff, he could not repay that loan, and incurred a \$40,000 Federal tax debt as a result of the loan being converted to an early withdrawal. He had an installment agreement with the IRS and has paid off that debt in full. He also documented that he had two other debts at the time of his layoff that he fully resolved. (Item 3; Answer; Response.) He indicated:

Between 2012 and 2016 I concurrently setup various payment plans with creditors and have eliminated all but this debt from that time period. I could only pay back a set number of creditors at one time. (Answer.)

Applicant is indebted to a property management firm in the amount of \$4,388, as alleged in ¶ 1.a. Applicant admitted this debt, but contests its validity. It became delinquent in 2016. Due to safety concerns with property management maintenance personnel, Applicant vacated this property prior to his lease expiration date. At the time of his move, Applicant owed one month's rent, which he paid in April 2017. The remainder is for property damage, which Applicant was unwilling to pay because he felt it was caused by the maintenance personnel. His November 2018 credit report reflects that he disputed this debt. Applicant explained that he has contacted this creditor numerous times since 2017 through letters and phone calls, to arrange a settlement with this creditor. He has yet to receive a response. (Item 3; Item 4; Item 5; Response.)

Applicant is indebted on a credit union account placed for collection in the amount of \$17,130, as alleged in ¶ 1.b. This was for a loan Applicant took in 2010 prior to being laid off. It was placed for collections in 2011. After his layoff, he could no longer afford to make payments on the loan. In his Answer, he indicated he was willing to establish a payment arrangement with this creditor. However, in his Response, he claimed this debt “has also been removed from the credit reports.” He produced no further documentation to explain the reason it no longer appears on the credit report. This debt is unresolved. (Item 3; Item 6; Answer; Response.)

Applicant is indebted on a medical account in the amount of \$2,927, as alleged in ¶ 1.c. In his security clearance application, Applicant indicated that he formally contested this debt through the credit reporting agencies. He noted that it does not appear on his 2018 credit report. (Item 3; Item 6; Response.)

Applicant’s most recent credit report, dated November 2018, reflects only one collection account (the account alleged in SOR ¶ 1.a). He is current on his vehicle loan, credit card account, student loan, and retail store credit cards. There are no new delinquencies. (Response.)

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are 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(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 national security eligibility 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. Directive ¶ E3.1.15 states an “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.”

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 that an 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.

Finally, 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 under the financial considerations guideline is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had over \$24,000 in debt, which became delinquent after he was laid off in 2010. There is sufficient evidence to establish disqualification under AG ¶¶ 19(a) and 19(c).

The guideline also includes conditions that could mitigate security concerns arising from Applicant's financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; 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 salary was reduced by more than half in 2010 as a result of being laid off. He has been addressing multiple unalleged accounts responsibly, albeit slowly, since then. However, he could only afford to address a few debts at a time, due to his decrease in income and his large Federal tax debt. Applicant successfully disputed SOR ¶ 1.c and it was removed from his credit report. While SOR ¶ 1.a remains unresolved, he attempted to formally dispute the account. When the debt was not removed after filing the dispute, he contacted the creditor to arrange payments. The creditor has not been responsive to his multiple efforts to establish payment arrangements. I find that he has attempted to address this debt responsibly, despite his inability to resolve it. However, while the debt identified in SOR ¶ 1.b no longer appears on Applicant's credit report, it has not been resolved.

Despite the unresolved status of SOR ¶ 1.b, it is unlikely the Applicant will have future financial problems. From a close review of his 2018 credit reports, it appears that Applicant has learned how to live within his means on a modified income. His past debts were due to factors largely beyond his control, and he now lives within his means. He has demonstrated a track record of responsibly addressing multiple unalleged accounts. AG ¶¶ 20 (a) and (b) provide mitigation. AG ¶ 20(e) provides mitigation to SOR ¶ 1.c.

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(d):

(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 national security eligibility 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 credited with his efforts to resolve his debts as funds would allow, since being laid off in 2010. He is current on his vehicle loan, credit card account, student loan, and retail store credit cards. There are no new delinquencies. While he has not resolved all of the debt on the SOR, he has demonstrated that future financial problems are unlikely. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F.

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

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 access to classified information. National security eligibility is granted.

Jennifer I. Goldstein
Administrative Judge