



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 23-01153 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

08/26/2024

Decision

HYAMS, Ross D., Administrative Judge:

Applicant provided sufficient information to mitigate the financial considerations security concerns arising from his delinquent medical debts. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 16, 2022. On June 6, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant answered the SOR on June 12, 2023, and requested a hearing before an administrative judge. The case was assigned to me on April 4, 2024.

The hearing convened on May 30, 2024. Department Counsel submitted Government Exhibits (GE) 1-4, which were admitted in evidence without objection. Applicant did not submit any documentation at the hearing. I held the record open for three weeks after the hearing to provide Applicant with the opportunity to submit documentary evidence. He timely submitted Applicant Exhibits (AE) A-F, which were admitted in evidence without objection.

Findings of Fact

In his answer, Applicant admitted SOR ¶ 1.a and denied ¶¶ 1.b-1.d. Based on my review of the pleadings, evidence submitted, and testimony, I make the following findings of fact.

Applicant is 39 years old. Since 2019, he has worked in a security function for a government contractor. He was married in 2010 and divorced in 2018. He has two minor children. He earned an associate degree in 2014 and has earned some credits towards a bachelor's degree. (Tr. 15-19; GE 1)

Applicant served in the Air Force Reserve from 2004-2012 and was honorably discharged. He was deployed to Kuwait twice and Iraq once and worked as an aircraft loader. He was diagnosed with cancer in 2022, which was service connected. He reported that while deployed to Iraq, the smoke from the burn pits would blow into the areas they were loading aircraft. The VA and his employer's health insurance have covered most of the related medical costs. (Tr. 15-26; GE 1)

In July 2020, Applicant's vehicle was rear-ended by a truck on the highway. The medical bills in the SOR are connected to that accident. He hired an attorney to sue the truck driver responsible for the accident. His attorney contacted his medical providers and advised them to put their bills into medical liens, so they could be paid from the settlement in his case. His case took two years to obtain a settlement, and he recovered \$55,000. The attorney that represented him has since closed his office. (Tr. 20-26)

The SOR alleges four delinquent medical debts. The status of the allegations is as follows:

SOR ¶ 1.a alleges a delinquent medical account for \$27,752. Applicant reported that this debt was for his hospital treatment after the accident. The hospital did not bill the VA or his health insurance, but rather put the full amount into collections. Applicant's attorney spoke with the hospital billing department and advised them to put this debt into a medical lien so they could be paid from the settlement, but they refused to do so. His attorney advised Applicant not to make any payments on this debt, since the hospital did not run the bill through any of his insurance providers and refused to follow the protocol to be paid from the settlement. Additionally, since the hospital did not make claims through either of Applicant's health insurance providers, the amount of the medical bill actually owed by Applicant is unknown. Applicant followed his attorney's legal and financial advice on this matter. Applicant used the settlement to cover the rest of his medical bills and costs. Since he was worried that he was going to die soon from cancer, he spent any remaining funds on his children. This debt has not appeared on any of the three credit reports in the record after August 2023. (Tr. 20-64; GE 2, 3, 4; AE A, B)

SOR ¶ 1.b alleges a delinquent medical account for \$3,869. Applicant stated that this debt was filed as a medical lien, and it was paid out of the settlement he received.

This debt has not appeared on any of his credit reports after 2022. This debt is resolved. (Tr. 20-64; GE 2, 3, 4; AE A, B)

SOR ¶ 1.c alleges a delinquent medical account for \$165. Applicant stated that this debt was filed as a medical lien, and it was paid out of the settlement he received. This debt has not appeared on any of his credit reports after 2022. This debt is resolved. (Tr. 20-64; GE 2, 3, 4; AE A, B)

SOR ¶ 1.d alleges a delinquent medical account for \$144. Applicant stated that this debt was filed as a medical lien, and it was paid out of the settlement he received. This debt has not appeared on any of his credit reports after 2022. This debt is resolved. (Tr. 20-64; GE 2, 3, 4; AE A, B)

Applicant provided a monthly budget, but it contains incorrect information and does not include his military disability pay, so it will not be considered. He provided a DD 214 showing his honorable military service and awards. He provided two professional character letters that state he is reliable and trustworthy, he has been relied on to protect the worksite security and personal identifiable information of employees, and he is a valued employee. The letters recommend that he be granted a security clearance. (AE C, D, E)

Policies

This case is adjudicated 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 the adjudicative guidelines (AG), which became effective on June 8, 2017.

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, administrative judges apply the guidelines in conjunction with the factors listed in 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."

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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 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.

The guideline notes conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and

- (c) history of not meeting financial obligations.

The financial considerations security concerns are established by the credit reports. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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.

AG ¶ 20(a) applies. These medical debts occurred under circumstances unlikely to recur, and no longer cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) applies. The conditions that resulted in the financial problem were largely beyond his control and he acted responsibly under the circumstance, by using his attorney to handle his creditors and distribute the settlement funds.

AG ¶ 20(e) partially applies. Applicant has a reasonable basis to dispute the legitimacy of the debt in SOR ¶ 1.a. His attorney's office is now closed, and he was unable to provide enough documentation to satisfy the second part of this condition for it to fully apply.

Applicant relied on the professional services and advice from his attorney to obtain a settlement and resolve his medical debts after he was rear-ended by a truck on the highway. There is a standard practice medical providers follow to get reimbursed in accident cases. In this case, the hospital failed to follow that protocol or even make a claim with his health insurance providers to get some kind of reimbursement. It was appropriate for Applicant to follow professional advice with regard to this debt. He has demonstrated the appropriate reliability, trustworthiness, and good judgement. Applicant has mitigated the financial considerations security concerns.

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(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 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 his military service and character letters. 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 in my whole-person analysis.

I had the chance to observe Applicant's demeanor and assess his credibility. He adequately explained the circumstances surrounding the SOR allegations, and I found his testimony and explanations to be credible and substantially corroborated by documentary evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility for a security clearance. I conclude that Applicant mitigated the financial considerations 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:

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| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a-1.d: | For Applicant |

Conclusion

It is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Ross D. Hyams
Administrative Judge