



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



In the matter of:)
)
) ISCR Case No. 12-05007
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

09/10/2014

Decision

WHITE, David M., Administrative Judge:

Applicant had a number of minor delinquent debts when he began his current employment almost three years ago. Since then he has been financially responsible and resolved almost all previous debts. Resulting security concerns were mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on January 17, 2012.¹ On April 17, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² The action was taken

¹Item 4.

²Item 1.

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), as amended (Directive); and the adjudicative guidelines that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR (Answer) on May 16, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on June 19, 2014. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on July 7, 2014. He submitted additional material in refutation, extenuation, or mitigation within the 30-day period thereafter. He made no objection to consideration of any contents of the FORM, and did not request additional time to respond. I received the case assignment on July 21, 2014.

Findings of Fact

Applicant is 28 years old, and married with one child. He enlisted in the Air Force after graduating from high school in 2004. He was administratively separated in August 2006 for a pattern of minor misconduct, with a general discharge under honorable conditions. He then worked as an avionics technician until entering college in August 2009. He left school and resumed working as an avionics technician in April 2010. He was hired by his present employer, a defense contractor, in October 2011.⁵

In his response to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.b, 1.n, 1.o, and 1.p. He denied the remaining allegations in the SOR, except ¶ 1.l, which he did not answer.⁶ Applicant's admissions, including those made in response to interrogatories from the DoD CAF,⁷ are incorporated into the following findings of fact.

Applicant had a number of delinquent debts in early 2012, as reflected in the Full Data Credit Report and Personal Subject Interview obtained by the Office of Personnel Management (OPM) in January and March, respectively, of that year. The SOR, issued more than two years later, primarily reflects that outdated information. Applicant's

³Item 3.

⁴The Government submitted seven Items in support of the SOR allegations.

⁵Item 4; Item 5 at 50.

⁶Item 3. SOR ¶ 1.l will be treated as if it was denied by Applicant.

⁷Item 5.

personal financial statement, reflecting his monthly earnings and expenses in December 2013, shows a surplus of \$1,625 with a net income of \$4,099 and only one regular debt payment toward a credit card that is in a current status.⁸

The record evidence establishes five SOR-alleged debts that were not adequately shown to have been resolved. Applicant claimed to have paid the \$88 medical debt in SOR ¶ 1.a, but provided no proof of payment that could be linked to verify it. It was reported to be delinquent and outstanding by Experian on credit reports in January 2012 and October 2013.⁹ He also said that he paid the \$63 utility debt alleged in SOR ¶ 1.c, but provided no proof that it was resolved.¹⁰ Applicant admitted that he owed the delinquent debts alleged in SOR ¶¶ 1.b (\$264), 1.n (\$113), and 1.p (\$30), in his Answer. He said that all could be paid immediately, but did not submit evidence from which I could conclude that he has done so. The total amount of these five potentially unresolved debts is \$558.

Applicant provided documentation clearly establishing that he resolved the formerly delinquent debts alleged in SOR ¶¶ 1.f, 1.g, 1.h, 1.j, and 1.m.¹¹ In his Answer, Applicant said that he admitted the \$1,028 delinquent cell phone debt alleged in SOR ¶ 1.o with the notation that he was working with the creditor. Analysis of the record credit reports reveals that SOR ¶ 1.o is based on a January 2012 Experian report by a collection agency that acquired the debt in August 2011.¹² The resolved debt alleged in SOR ¶ 1.g was originally owed to the same cell phone company, but reported on Experian in 2009 by a different collection agency.¹³ Applicant provided a more recent October 2013 Experian credit report as an attachment to his response to DoD CAF interrogatories,¹⁴ and a May 2014 3-Bureau credit report in his FORM response, neither of which report this debt in connection with any of the respective creditors. I conclude that SOR ¶¶ 1.g and 1.o are duplicate allegations of the same former debt, which Applicant resolved.

The \$21,612 debt alleged in SOR ¶ 1.d refers to the original loan amount for a vehicle that Applicant purchased in February 2007. It is reported as the “High Credit” or “High Balance” amount in the record credit reports. In December 2007, Applicant was unable to make the \$530 monthly payment due to a reduction in hours at work, and initiated the voluntary repossession of the vehicle. The lender accepted possession of

⁸Item 1; Item 5; Item 7.

⁹Item 3; Item 5 at 18; Item 7 at 6.

¹⁰The only evidence about this debt is an Experian entry showing it in collections in 2013. Item 5 at 19.

¹¹Item 3; FORM Response (Chase statement).

¹²Item 7 at 8.

¹³Item 7 at 4.

¹⁴Item 5.

the vehicle and charged off any remaining debt, resulting in a zero (\$0) balance due on the loan, as reported on all record credit reports. This debt is resolved.¹⁵

Of the five remaining debts alleged in the SOR, four (¶¶ 1.e, 1.k, 1.l, and 1.q) were minor debts that became delinquent in 2005, 2006, and 2008, as reported only by Equifax on Applicant's 2012 OPM credit report. His June 2014 Equifax credit report does not reflect that any of these debts remain outstanding or unresolved.¹⁶ Similarly, the \$125 delinquency alleged in SOR ¶ 1.i is based on a February 2006 report to Experian that appeared on his OPM credit report. It does not appear on his October 2013 Experian credit report.¹⁷ Accordingly, the record supports Applicant's denial of these debts in his Answer, on the basis that they were paid.

Applicant's submissions in response to the SOR and FORM are primarily financial documents reflecting various payments, some of which are not readily identifiable in connection with particular SOR allegations. He is representing himself, and is an avionics technician with a high school diploma, so the less-than-comprehensive nature of his submissions will not be adversely attributed in evaluating his attempts to supply documentation requested by the Government. Among the documents he submitted are copies of several payments of \$282.39 that he made to "Financial Adjustment Services." Presumably, this service was involved with achieving the resolution of the debts discussed above.

Applicant submitted no evidence of formal financial counseling. He provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references describing his judgment, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant's eligibility for access to classified information.

¹⁵Item 3; Item 4 at 40; Item 5 at 11-12, 19-20; Item 7 at 8; FORM Response. This debt does not appear on Item 6, Applicant's most recent credit report, which shows him current on payments toward a \$35,000 auto loan he took out in January 2014.

¹⁶Item 7 at 6, 9; Item 6.

¹⁷Item 7 at 5; Item 5 at 16-22.

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 under 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.

Department Counsel asserted, and the record evidence is sufficient to initially raise, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant's January 2012 credit report, obtained shortly after submission of his SF 86, showed about fifteen relatively small delinquent debts with a total outstanding balance due of about \$7,600. Those debts arose at various times during the preceding seven years, before Applicant obtained his current employment. Applicant's response to DoD CAF interrogatories did not address these debts in detail, or demonstrate their resolution. This evidence raised security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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, 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 most recent credit report (Item 6) contains only one entry concerning a delinquent debt: the \$264 credit card account that was closed and charged off in 2010, as alleged in SOR ¶ 1.b. Applicant has incurred no new delinquencies since

obtaining his present employment in late 2011, and sufficiently demonstrated resolution of most prior debts during that period. He has enough monthly surplus income to make recurrence of financial problems unlikely, and his record over the past three years does not cast doubt on his current reliability, trustworthiness, or good judgment. The evidence therefore establishes some mitigation under MC 20(a).

Applicant offered insufficient evidence to support mitigation under MC 20(b). His short period of unemployment after separation from the Air Force for misconduct was attributable to his actions, and he asserted no other hardship that may have interfered with his ability to address some obligations between 2005 and 2011.

Applicant offered no evidence of formal financial counseling, but did establish clear indications that his earlier financial problems have been largely resolved, and that his budget is under control. He demonstrated successful efforts to repay or otherwise resolve all but a few minor SOR-alleged debts. Only one \$264 debt that was charged off in 2010 remains on his most recent credit report. This evidence shows additional mitigation under MC 20(c) and 20(d). Applicant did not deny the initial validity of any SOR-listed debt, or otherwise seek to establish mitigation under MC 20(e).

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 the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility predated his current employment, and involved relatively minor delinquent debts that he incurred between ages 19 and 25. Over the past three years, he has demonstrated financial responsibility, and all but a few small debts were demonstrably resolved during that period. This

shows increased maturity, rehabilitation, and significantly reduced potential for pressure, coercion, or duress.

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 from his 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.q: 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.

DAVID M. WHITE
Administrative Judge