



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



In the matter of:)	
)	
)	ISCR Case No. 12-05918
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

03/03/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On April 28, 2014, the Department of Defense (DOD) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on June 24, 2014, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on September 12, 2014, and reassigned to me on December 29, 2014. The case was scheduled and rescheduled several times before it was finally conducted on January 29, 2015. Government Exhibits (GE) 1 through 8 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) 1.a through 6.g, which were admitted without objection. The record was held open until February 17, 2015, for Applicant to submit additional information. He did not submit any additional documents. The Defense Office of Hearings and Appeals (DOHA) received the hearing transcript (Tr.) on February 9, 2014.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor. He served on active duty in the U.S. military from 2002 until he was honorably discharged in 2011. He has worked for his current employer since 2011. He has an associate's degree with additional college credits in pursuit of a bachelor's degree. He is married with a two-year-old child.¹

Applicant joined the military in 2002 when he was 18 years old. Applicant's father was dishonest and took advantage of his family. His father had personal information about his family, including their dates of birth and Social Security numbers. Applicant's father lived in a state (State A) where Applicant never lived. Applicant's brother moved to State A in 2002 to live with his father. While in State A, Applicant's father opened accounts in Applicant's aunt's and grandmother's names without their permission. He then did not pay the bills on those accounts. The house in State A was lost to foreclosure, and Applicant's father and brother moved to State B, another state where Applicant never lived.²

Applicant's father opened accounts in Applicant's brother's name and also in Applicant's name without their authorization. Applicant's brother saw mail addressed to Applicant at their home in State B. He confronted his father about why Applicant was receiving bills at their address, but his father could only give "impractical excuses." Applicant first noticed fraudulent charges in his name in 2006 while he was stationed overseas. He decided to cut ties with his father. His father passed away in October 2014. Applicant had little contact with his brother because he was living with his father, but they reconnected after their father's death.³

The extent of the father's criminal activities was not discovered until after his death. That is when Applicant's brother discovered his father opened accounts in his name. He also discovered documents with Applicant's name on them. He provided the information and documents to Applicant and also wrote a letter attesting to the above. Applicant's father's address and three other addresses in the city where Applicant's father lived are listed as addresses on Applicant's credit reports.⁴

¹ Tr. at 74-77; GE 1.

² Tr. at 16-18; GE 1-3; AE 1.a, 1.b.

³ Tr. at 16-17, 83; GE 1-3; AE 1.a, 1.b.

⁴ Tr. at 16-18; Applicant's response to SOR; GE 2-8; AE 1.a, 1.b, 2, 4.a-6.g.

The SOR alleges ten delinquent debts with balances totaling about \$12,500. The debts are all listed on at least one credit report. SOR ¶ 1.i (\$1,084 debt to a telecommunications company) and SOR ¶ 1.c (\$1,195 debt to a collection company on behalf of the same telecommunications company) are duplicate accounts. SOR ¶ 1.a (alleged as a \$1,843 medical debt) and SOR ¶ 1.f (alleged as a \$1,831 debt to a collection company on behalf of a “payday” loan company) are also duplicate accounts. See discussion below. When duplicate accounts are omitted, there are eight debts totaling about \$9,620. Applicant denied owing all the debts. He believes that most of the debts were opened by his father without his authorization.⁵

Applicant’s brother provided copies of statements and collection notices that he found in his father’s file cabinet. The documents had Applicant’s name with his father’s address. Several of the documents relate to debts alleged in the SOR. In 2006, Applicant’s father opened an account in Applicant’s name with the telecommunications company identified in SOR ¶¶ 1.c and 1.i. Applicant disputed the debt with the credit reporting agencies. Equifax deleted the debt noting: “We have researched the collection account. Account # [-----] The results are: This item has been deleted from the credit file.”⁶

Applicant’s brother provided an April 2007 collection notice from the collection company handling the \$499 debt to the cable television provider identified in SOR ¶ 1.d. Applicant’s name was on the notice. The address that received the service was in the city where Applicant’s father lived. The collection notice for \$474 went to Applicant’s father’s street. The street numbers on the collection notices provided by Applicant’s brother vary slightly. This was possibly intentional on his father’s part to throw off the collection companies. Applicant disputed the debt with the credit reporting agencies. Equifax deleted the account noting: “We have researched the collection account. Account # [-----] The results are: This item has been deleted from the credit file.” TransUnion also deleted the account after an investigation.⁷

SOR ¶ 1.h alleges a \$155 debt to a collection company on behalf of a satellite television provider. Applicant’s brother provided a February 2007 bill from the satellite television provider in Applicant’s name sent to his father’s address. The \$318 bill noted the company did not receive payment for their last month’s statement. The debt is not listed on Applicant’s most recent credit report.⁸

In February 2010, the law firm handling the \$535 debt to a bank (SOR ¶ 1.j) sent a collection notice in Applicant’s name to his father’s address. In July 2010, the collection company handling the same debt sent a collection notice in Applicant’s name

⁵ Applicant’s response to SOR; GE 2-8; AE 1.a.

⁶ Tr. at 16, 69; Applicant’s response to SOR; GE 2; AE 1.a, 5.b.

⁷ Tr. at 67; Applicant’s response to SOR; GE 5-8; AE 1.a, 4.c, 5.b.

⁸ Tr. at 68; Applicant’s response to SOR; GE 5-8; AE 1.a, 2.

to his father's address. The debt was transferred to a collection company. The collection company later reported the debt as paid.⁹

SOR ¶¶ 1.e (\$1,945) and 1.g (\$1,204) allege debts to utility companies that are located in State B where Applicant's father lived. Applicant never lived in that state. Applicant's brother told him that his father had a large utility bill because he was growing marijuana. The debts are not listed on the most recent credit report.¹⁰

Applicant denied owing the remaining three debts, but none of the debts can be tied to his father. SOR ¶ 1.a alleges a \$1,843 medical debt. The creditor is unidentified. A credit report from April 2014 lists the debt as having a date of last action of September 2007. It is unlikely that Applicant would have a medical debt from that period because he was on active duty in the military, and he did not have any dependents at that time. All his medical expenses were paid by the U.S. Government. The debt is not listed on the most recent credit report.¹¹

SOR ¶ 1.f alleges a \$1,831 debt to a collection company on behalf of a payday loan company. Applicant admitted borrowing money from the company, but he stated that he paid the loan. The March 2012 combined credit report lists the debt as reported by all three credit agencies with a date of last activity of September 2007. The debt is not listed on the September 2013 and April 2014 Equifax credit reports. Both credit reports list a medical debt of \$1,843 (SOR ¶ 1.a) with the same six-digit account number as the payday loan debt.¹² A creditor is not identified in the reports. I conclude the two debts are duplicate accounts. Neither debt is listed on the most recent credit report.¹³

SOR ¶ 1.b alleges a \$2,244 debt to a collection company on behalf of an apartment complex. The March 2012 combined credit report lists the debt as reported by all three credit agencies with a date of last activity of October 2007. Applicant admitted living in the apartment, but he denied that he vacated the apartment owing any rent or damages. Applicant disputed the debt with the credit reporting agencies. Equifax deleted the debt noting: "We have researched the collection account. Account # [-----] The results are: This item has been deleted from the credit file." TransUnion also deleted the account after an investigation.¹⁴

Applicant was forthright and credible about his finances and his father's actions. Applicant paid several debts not alleged in the SOR that he admitted were his

⁹ Tr. at 55-58, 62-64; Applicant's response to SOR; GE 5-8; AE 1.a.

¹⁰ Tr. at 18-21, 67-68; Applicant's response to SOR; GE 1 5-8; AE 2.

¹¹ Tr. at 46-47; Applicant's response to SOR; GE 5-8; AE 2.

¹² The chance of two unrelated accounts having the same six-digit account number is literally one in a million.

¹³ Tr. at 26-29, 47-49; Applicant's response to SOR; GE 5-8; AE 2.

¹⁴ Tr. at 22-26, 65-66; Applicant's response to SOR; GE 2, 5-8; AE 4.c, 5.b.

responsibility. He has been disputing the fraudulent and inaccurate entries on his credit report for several years. He retained the services of a law firm to assist him in disputing the debts. The only debt alleged in the SOR that is listed on Applicant's most recent credit report is the one that was paid. Other than the issues addressed above, Applicant's finances are sound. He has an important job that pays a good salary. His wife works. They earn enough to pay their bills and save for emergencies, their child's college fund, and their retirement. He has the funds to pay the alleged debts, and he stated that he would pay them if he discovered they were his responsibility. He has not received formal financial counseling, but he reads financial books and materials.¹⁵

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, 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 access to classified information will be resolved in favor of 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

¹⁵ Tr. at 18-21, 28-30, 37-41, 45-46, 49-55, 69-74, 77-79; Applicant's response to SOR; GE 2, 3; AE 2-6.a.

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 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. The following are potentially applicable:

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

The delinquent debts alleged in the SOR are listed on credit reports. Credit reports are generally sufficient to establish the Government’s *prima facie* case of Guideline F security concerns. See, e.g., ISCR Case No. 10-03668 at 2 (App. Bd. Oct. 5, 2012). AG ¶¶ 19(a) and 19(c) have been raised by the Government’s *prima facie* case.

Conditions that could mitigate 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;
- (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; 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 provided compelling evidence that his father opened accounts in his name without his authorization. Six of the eight non-duplicative debts alleged in the SOR are attributable to his father, and one of those was paid. Two of the debts were not connected to his father. Applicant credibly testified that he did not believe he owed the debts, but he would pay them if he discovered they were his responsibility. All debts were disputed, and the only debt alleged in the SOR that is listed on Applicant's most recent credit report is the one that was paid. All of the above mitigating conditions are applicable.

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 the 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's criminal father created financial problems for his entire family. It took Applicant years to get out from under the financial quagmire created by his father. Applicant's current finances are sound. He has an important job that pays a good salary. He is taking steps to provide for his family's future.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude 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:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a-1.j:	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.

Edward W. Loughran
Administrative Judge