



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-09057

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

August 18, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant resolved \$31,509 of his alleged \$33,494 debt. He remains indebted to three creditors in the total amount of \$1,940. He made great progress in decreasing his total delinquent debt, and promised to continue addressing his remaining delinquencies. The evidence is sufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on April 25, 2012.¹ On December 24, 2014, the Department of Defense Consolidated Adjudications Facility

¹Item 4.

(DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² The action was taken 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 on January 5, 2015, 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 May 11, 2015. 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 May 19, 2015. He submitted 27 pages of additional material in response to the FORM (Response). I received the case assignment on July 21, 2015.

Findings of Fact

Applicant is 32 years old, and has worked for a defense contractor since April 2012. He reported unemployment from December 2009 to April 2011, after he was terminated by his employer. He is unmarried and reported no children.⁵

The SOR alleged that Applicant is indebted to ten creditors in the total amount of \$33,494. In his response to the SOR, Applicant admitted all of the allegations concerning his delinquent debts alleged in SOR ¶ 1, although he noted that ¶¶ 1.a and 1.h alleged the same debt.⁶ The credit reports dated May 7, 2012, and October 8, 2014, identified all of Applicant's delinquent debts.⁷

Applicant was indebted on an vehicle loan that was charged off in the approximate amount of \$19,785, as alleged in SOR ¶ 1.a. Applicant was unable to resolve this delinquency when he was laid off in 2009. He car was repossessed and sold. Applicant owed \$8,577 after the sale of the car, as alleged in SOR ¶ 1.h. This

²Item 1.

³Item 3.

⁴Department Counsel submitted seven items in support of the SOR allegations.

⁵Item 4.

⁶Item 3.

⁷Items 5 and 7.

debt was settled in full on March 6, 2015, as documented in a letter from the creditor dated April 21, 2015. This debt is resolved. (Response.)

Applicant was indebted on a delinquent debt in the approximate amount of \$1,613, as alleged in SOR ¶ 1.b. He indicated this account became delinquent in 2008 because his “ex girlfriend was paying [his] bills because [he] worked all the time. [And] she was not paying.” Applicant presented an account statement that shows he made a \$450 payment on this debt on April 17, 2015. The statement lists a past-due balance of \$0. This debt is resolved. (Response; Item 5.)

Applicant is indebted on a delinquent medical debt in the approximate amount of \$935, as alleged in SOR ¶ 1.c. This debt has been delinquent since May 2012. This debt is unresolved. (Response; Item 5.)

Applicant was indebted on a delinquent medical debt in the approximate amount of \$278, as alleged in SOR ¶ 1.d. Applicant presented a letter dated April 22, 2015, that shows this account was paid in full. It is resolved. (Response.)

Applicant is indebted on a delinquent medical debt in the approximate amount of \$189, as alleged in SOR ¶ 1.e. Applicant averred in his Response that this debt is paid. He provided a confirmation number, but failed to introduce documentation to support this claim. This debt is unresolved. (Response.)

Applicant is indebted on a delinquent telecommunications debt in the approximate amount of \$861, as alleged in SOR ¶ 1.f. Applicant cancelled his service after moving and never received the final bill. This debt remains unresolved. (Response.)

Applicant was indebted on a delinquent medical debt in the approximate amount of \$630, as alleged in SOR ¶ 1.g. This debt first became delinquent in 2012. Applicant presented a letter from this creditor, dated March 30, 2015, that shows this debt was “paid in full.” It is resolved. (Response.)

Applicant was indebted on a delinquent debt in the approximate amount of \$401, as alleged in SOR ¶ 1.i. This debt was for an overdrawn checking account. Applicant presented a letter dated February 13, 2013, that shows this debt was “satisfied in full.” It is resolved. (Response.)

Applicant purportedly was indebted on a delinquent tax debt in the approximate amount of \$225, as alleged in SOR ¶ 1.j. The only support for this allegation provided by the Government was in Applicant’s disclosure in his e-QIP and during his personal subject interview. (Items 4 and 6.) He explained in his Response that he “thought he owed the IRS money so [he] put it down on his application because [he] did not know for sure and [he] did not want you to find out that [he] did if [he] said no.” He later contacted the IRS and was told he “did not owe them.” (Response.) Instead, his credit report reflects he was delinquent on a bill to a tax preparer. That debt has been

resolved. There are no Federal or state tax debts identified on his credit reports. This debt is resolved. (Response; Item 5; Item 7.)

Applicant stated that he is working on getting all of his debts resolved and ‘hope[s] to have all our debt paid by the end of 2015.” He attributed his debts to his unemployment and lack of medical insurance. (Item 6; Item 3; Response.) There is no evidence that Applicant obtained credit counseling, sought assistance with a debt consolidation company, or contested any of his unsatisfied debts. He submitted no evidence concerning the quality of his professional performance, or the level of responsibility his duties entail. He provided no character references describing his judgment, trustworthiness, integrity, or reliability.

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.

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 established, 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 incurred \$33,494 in debt, identified on his credit report since 2008. Of his ten alleged debts, he has resolved seven accounts \$31,509. He remains indebted to three creditors in the total amount of \$1,940. His ongoing pattern and history of inability or unwillingness to pay his debts raises security concerns under DCs 19(a) and (c), and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes three 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;

(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

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has initiated a good-faith effort to resolve his delinquent accounts. He has worked through them systematically and resolved seven of ten accounts. He intends to resolve the remaining three debts by the end of 2015. There are clear indications that Applicant is resolving his delinquencies. His recent track record of attending to his debts suggests Applicant has matured and that similar financial difficulties are unlikely to occur in the future. The record is sufficient to establish mitigation under the foregoing conditions.

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 offered sufficient evidence of financial rehabilitation, better judgment, and responsible conduct with respect to his finances, which offset resulting security concerns. While he needs to resolve the remaining three delinquent accounts, he has established a recent track record of diligently addressing his delinquencies. Overall, the record evidence leaves me without substantial 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.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.

JENNIFER I. GOLDSTEIN
Administrative Judge