



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



In the matter of:)	
)	
)	ISCR Case No. 14-03003
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Esquire *Pro se*

08/31/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. The 15 collection accounts alleged in the Statement of Reasons (SOR), totaling more than \$16,500, have been resolved. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on October 21, 2014, the DoD issued an SOR detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On November 28, 2014, Applicant answered the SOR and requested a hearing. On March 25, 2015, I was assigned the case. On April 29, 2015,

¹ Executive Order 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) effective within the DoD on September 1, 2006.

the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on May 6, 2015. Government's Exhibits (Ex) 1 through 3 and Applicant's Exhibits A through E were admitted without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. No additional material was received. On May 14, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's answer to the SOR (SOR Answer), he admitted five of the debts in the SOR and denied the remaining delinquent obligations. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 33-year-old lead aircraft mechanic who has worked for a defense contractor since March 2009, and seeks to maintain a security clearance. His hourly pay is \$30. (Tr. 35) From January 2003 through September 2007, he honorably served on active duty in the U.S. Air Force separating as a senior airman (E-4). (Tr. 26) He receives monthly disability payments of \$585 from the U.S. Department of Veteran's Affairs (VA). The VA rates Appellant's disability at 40 percent. (Tr. 36) When he received his back payments from the VA, the money was used to pay his financial obligations. (Tr. 39)

Applicant is married and has three children, ages 2, 8, and 9. (Tr. 36) His wife is expecting another child and is planning on commencing work in July 2015, when her schooling is completed. (Tr. 36)

In November 2014, Applicant employed the services of a credit repair service to help him utilize tools "to increase his fiscal literacy and responsibility." (SOR Answer) The program was to assist him "in paying all of his financial obligations in a timely manner and in the required amounts." (SOR Answer) He paid no fee for the services. He received credit counseling from the service. (Tr. 28)

In June 2007, while in the military, Applicant obtained a credit union loan. (Tr. 25) The high credit amount is listed as \$2,700. Payments were timely made for three months before payments stopped. (Ex. 3) Payment stopped when he left the service and did not have a job. (Tr. 25) In May 2008, the account was transferred to a collection agency. (Ex. 3) Applicant is disputing the \$4,797 collection debt listed in SOR 1.a. (SOR Answer) In his SOR Answer, he asserts he would pay the debt in full when the amount owed on the account was confirmed. At the hearing, he stated the credit repair service contacted the collection company and the obligation no longer appears on his credit report. (Ex. E, Tr. 25) Two weeks prior to the hearing, Applicant contacted the collection agency and was told there was no account owing. (Tr. 26)

In October 2013, Applicant settled and paid the following medical collection accounts: \$50 (SOR 1.i) and \$50 (SOR 1.j). (SOR Answer I, I.2, J, J-2, Tr. 32) In

November 2014, Applicant paid the following collection accounts: \$133 (SOR 1.c) for internet service, \$525 (SOR 1.d) for utility service, \$47 (SOR 1.e) for medical service², \$203 (SOR 1.f) for x-rays, \$160 (SOR 1.k) for a utility bill, and \$152 (SOR 1.l) for telephone service. (SOR Answer B, C, D, E, K, L, Tr. 29 – 33)

Also in November 2014, Applicant authorized the collection company holding a \$1,019 telephone service collection account (SOR 1.m) to begin automatically collecting \$50 monthly until the debt was paid. (SOR Answer M, M. 2) On December 1, 2014, Applicant paid the \$309 cable service collection account listed in SOR 1.b. (SOR Answer C, Tr. 29) In April 2015, he paid \$480 on the cable bill and on the \$165 telephone service collection account (SOR 1.n). (Ex. C) Both accounts were with the same creditor and same collection agency. (Tr. 33) His April 2015 credit report indicates the two accounts were paid collection accounts with a zero balances. (Ex. C)

In March 2015, Applicant accepted an offer and paid \$1,034 to settle the \$1,476 medical collection account (SOR 1.g). (Ex. A, Tr. 32) Also in March 2015, the \$2,387 medical account (SOR 1.h) was settled in full after Applicant made a \$1,909 payment. (Ex. B, Tr. 32)

In 2007, Applicant had a \$5,172 delinquent obligation (SOR 1.o) following the repossession of his 2001 vehicle. (Tr. 34, 37) In February 2015, he settled the debt by paying \$1,810. He made numerous attempts to obtain a document from the creditor documenting the settlement. (Tr. 39) His April 2015 credit report indicates the account had a zero balance having been settled for less than the full balance. (Ex. D)

Applicant is current on his car payment and maintains no credit cards. (Tr. 42) On and off for the past six years, his father-in-law lived with him, provides no support to the household, and was a financial burden. (Tr. 41) Applicant became liable on the telephone debt (SOR 1.m, \$1,019) when his father-in-law decided to stop paying his telephone bill. (Tr. 41) The disagreement over the nonpaying father-in-law reached a point during the summer of 2014 that Applicant and his wife separated for four months. (Tr. 41) After reconciling, his father-in-law no longer lives in the household. (Tr. 41)

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 must be considered 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 the adjudicative process. The administrative judge's overarching

² Applicant is subject to staph infections and has sought emergency room and other medical treatment on various occasions. (Tr. 32)

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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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 Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. Applicant had 15 collection accounts which totaled more than \$16,500. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations 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, 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 had a number of collection accounts that have now been paid. He received a lump-sum VA disability payment, which he used to address his delinquent obligations. He was supporting himself, his wife, three children, and his father-in-law. His father-in-law not only failed to assist with the household's expenses, but incurred a sizable telephone bill, which Applicant had to pay. Discontent over his father-in-law's lack of contribution to the family's finances grew to the point Applicant and his wife separated for four months last summer. They have reconciled and are back together, without the presence of the father-in-law.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by Applicant having to support not only his family, but also his father-in-law. He no longer supports his father-in-law. Having paid his delinquent accounts it is unlikely he will incur future financial problems. AG ¶ 20(a) applies.

Under AG ¶ 20(b), Applicant experienced separation along with the financial burden associated with it. Many of the obligations were incurred for medical treatment. He kept in touch with his creditors and worked out repayment agreements, which he has paid. AG ¶ 20(b) applies.

Under AG ¶ 20(c) and ¶ 20(d), Applicant has received financial counseling and addressed 14 of the 15 debts. His financial correction service contacted the final creditor and the debt no longer appears on Applicant's credit report. AG ¶ 20(c) and ¶ 20(d) apply.

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. Applicant honorably served in the

U.S. Air Force and receives monthly VA disability compensation for injuries and conditions incurred during his service. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The SOR obligations were not luxuries, but were incurred for medical treatment, utility service, telephone service, and other obligations. His financial problems were contributed to by the presence of his father-in-law in the household. This financial burden no longer exists.

Applicant has paid his delinquent accounts. The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1)) Overall, the record evidence leaves me without questions or doubts about Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.o: 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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge