



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



In the matter of:)
)
) ISCR Case No. 14-00239
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

October 29, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 58-year-old employee of a defense contractor. He is alleged to be indebted to nine creditors in the approximate amount of \$61,689. He has acted responsibly with respect to his debts by either resolving them or making regular payments on them. Eligibility for access to classified information is granted.

Statement of the Case

On March 14, 2014, the Department of Defense 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective September 1, 2006.

Applicant answered the SOR on May 7, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on September 5, 2014.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 5, 2014, scheduling the hearing for October 14, 2014. The hearing was convened as scheduled. The Government offered hearing exhibit (HE) I and Exhibits (GE) 1 through 7. GE 1 through GE 5 and GE 7 were admitted without objection. Applicant objected to the admission of GE 6 because it was no longer accurate. GE 6 was admitted over Applicant's objection. (Tr. 39-41.) Applicant offered Exhibits (AE) A through S, which were admitted without objection. Applicant testified on his own behalf and called two witnesses. The record was left open for Applicant to submit additional exhibits. On October 22, 2014, Applicant presented two additional exhibits marked AE T and AE U.¹ Department Counsel had no objection to AE T or AE U, and they were admitted. DOHA received the transcript of the hearing (Tr.) on October 22, 2014.

Findings of Fact

Applicant is a 58-year-old employee of a defense contractor. He has worked for his employer for the past 13 years. He served in the Navy for 21 years. He was honorably discharged. He has held a security clearance for over 30 years, without incident. He is married and has one adult daughter. He also cares for two minor foster children. He possesses a bachelor's degree awarded in 2009. (GE 1; AE R; Tr. 56, 70-71, 81-82.)

As stated in the SOR, Applicant was alleged to be in debt to nine creditors in the approximate amount of \$61,689. Applicant admitted all of the debts listed in the SOR subparagraphs, with explanations. His debts are found in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 5; GE 6; GE 7.)

Applicant attributes his debts to a marital separation from his wife from 2011 to 2014. During that period, he was forced to maintain two households and was unable to afford to make payments on some of his debts. Applicant and his wife recently reconciled. (Tr. 82-84.) His debts are as follows:

Applicant was indebted to a University in the amount of \$1,320, as identified in SOR subparagraph 1.a. Applicant presented a letter from this creditor, dated April 21, 2014, which indicated his account was settled in full. This debt is resolved. (AE A; Tr. 58, 83-84.)

Applicant was indebted to a city for unpaid parking tickets in the amount of \$119 and \$87, as identified in SOR subparagraphs 1.b and 1.c. The parking tickets were incurred by his daughter and he was unaware of them until he investigated these allegations identified on the SOR. Applicant presented a letter dated April 16, 2014, which shows that these debts were paid in full on April 2, 2014. These debts are resolved. (AE B, Tr. 58-59.)

¹ Applicant marked AE T and AE U as "Exhibit A" and "Exhibit B." They were renamed to avoid confusion.

Applicant was indebted to a collection agency for a cellular phone company in the amount of \$127, as identified in SOR subparagraph 1.d. This debt was for a cell phone Applicant procured for his father, while his father was in hospice care. Applicant forgot about the phone after his father passed away and the account went unpaid. Applicant produced a letter from this creditor that this account was settled in full on April 15, 2014. This debt is resolved. (AE C, Tr. 60-62.)

Applicant was indebted to a collection agent for another cellular phone company in the amount of \$401, as identified in SOR subparagraph 1.e. This debt was a cellular phone account Applicant opened for his daughter and niece. He was unaware they defaulted on the account, but satisfied it in full when he learned of the delinquency. He provided a letter from the creditor that shows the account was resolved on November 29, 2013. (AE D; Tr. 62-63.)

Applicant was indebted to a collection agent for a student loan company on three delinquent accounts in the amounts of \$4,590, \$13,917, and \$12,493, as identified in SOR subparagraphs 1.f, 1.g, and 1.h. Applicant enrolled these three accounts into the Federal Loan Rehabilitation program. He must successfully make payments on these loans over a nine-month period and the loans will be rehabilitated and removed from default status. He made his first payment under this program in April 2014. He has consistently made his payments on time since that date, through an automatic debit from his bank account. These debts are being resolved. (AE G; AE U; AE O; AE P; AE Q; Tr. 63-68, 82-86.)

Applicant was indebted to the IRS on delinquent taxes for tax years 2005 through 2011 in the amount of \$28,635, as identified in SOR subparagraph 1.i. Applicant filed his income tax returns for each of those years, but found that his income tax payroll deductions did not cover what he owed. He met with an IRS agent to seek advice on how to repay his debt and to avoid future tax debt in 2010 or 2011. As a result of that meeting, he increased his payroll deductions and set up an automatic payroll allotment to satisfy his past-due income taxes. His payroll office verified that Applicant has had biweekly payroll deductions of \$210 since June 30, 2011. His deductions "have been current and without interruption." His remaining balance is \$22,838.90. He testified he is committed to continuing his payments. This debt is being resolved. (AE H; AE I; AE K; AE S; AE T; Tr. 74-80, 86-89.)

Applicant's personal financial statement reflects that after meeting his monthly expenses, he has \$1,856 remaining. His most recent credit report reflects no new delinquencies. (GE 7; AE J; Tr. 73.)

Applicant presented the testimony of two witnesses: a former Navy service member; and a lawyer friend who counseled Applicant on his finances. They indicated Applicant has great integrity and that he puts "God and Country first." They spoke of Applicant's high level of ethics, his devotion to his family, and numerous volunteer activities. They both reflected that Applicant is trustworthy.

Applicant testified that he mentors children in his community. Additionally, he is involved in a bicycle fund drive to get bikes for children. He belongs to a fraternity that does other community service. He has also provided a stable foster home for relatives after their father passed away. His DD-214 reflects that he was awarded the Navy and Marine Corps Commendation Medal; four Navy and Marine Corps Achievement Medals; the Joint Meritorious Unit Award; and five Good Conduct Medals, among his many decorations and awards. (AE N; Tr. 23-33, 68-71.)

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 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 AG ¶ 2 describing 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." 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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.

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, as follows:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant’s delinquent debts began accumulating in 2005 when was unable to satisfy his income taxes. He stopped making payments on some of his debts additional debts in 2011. He has a history of debt that he was unable to resolve for nine-year period. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

Two Financial Considerations mitigating conditions under AG ¶ 20 fully apply:

- (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 acted responsibly and made a good-faith effort to repay his creditors. He fully satisfied the debts identified in SOR subparagraphs 1.a, 1.b, 1.c, 1.d, and 1.e. He is making payments on the debts identified in SOR subparagraphs 1.f, 1.g, 1.h, and 1.i. He will continue to work to resolve all remaining debts until they are

satisfied. He has received financial counseling from his friend, an attorney. 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. 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 served honorably in the Navy for 21 years. He has held a security clearance for 30 years, without incident. He served as a government contractor for 13 years. He is an active volunteer in good causes serving his community. His financial difficulties are attributable to his separation from his wife and charges he permitted family members to make in his name that he failed to monitor during his separation from his wife. They have now reconciled. He has acted responsibly by either fully repaying his debts or making payments on his delinquencies under arrangements that are satisfactory to the creditors involved. No new debts have been incurred. He has sufficient income to insure that there is little likelihood of recurrence.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns. I conclude the whole-person concept for Applicant.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	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