



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



In the matter of:)
)
) ISCR Case No. 14-00470
)
)
Applicant for Security Clearance)

Appearances

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

09/30/2014

Decision

HOWE, Philip S., Administrative Judge:

On December 21, 2012, Applicant submitted his electronic version of the Security Clearance Application (e-QIP). On May 2, 2014, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on May 28, 2014. He offered an explanation regarding the reason for his indebtedness. Applicant requested his case be decided on the written record in lieu of a hearing.

On July 23, 2014, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on July 23, 2014. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on August 5, 2014. Applicant filed a Response to the FORM on August 29, 2014, within the 30 day time allowed that would have expired on September 4, 2014. I received the case assignment on September 12, 2014. Based upon a review of the complete file, pleadings, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant admitted the allegations in Subparagraphs 1.a, 1.b, and 1.f. He denied the allegations in Subparagraphs 1.c, 1.d, 1.e, 1.g, and 1.h. (Items 1, 4)

Applicant is 42 years old and married. He has two children. He works for a defense contractor. (Item 5)

Applicant owes eight delinquent debts totaling \$51,839. He claims he was unaware of this indebtedness. (Items 1, 4, 6; Answer; Response)

He and his wife claim in their statements that she incurred the debt and her husband knew nothing about it. Applicant's Answer contains a May 28, 2014 letter from his wife stating in part, "The debts in question arose as a result of my actions and were unknown to Mike. Once Mike became aware of the situation, he liquidated assets to pay down the debt. All debts have been addressed and are current. The two remaining accounts with balances will be satisfied in full. To help, I have secured employment to assist in paying off the remaining debt." (Items 4, 6; Answer; Response)

Applicant told the government investigator in July and August 2013 and in his Response that his wife managed the household money, opened these credit accounts, made purchases unknown to him, and then did not pay the monthly credit bills. Applicant admitted three delinquent debts and denied five of them. He never checked his credit report. He further stated he was making payments to some of the creditors. Applicant told the investigator he would not use credit cards again and that the same situation would not happen again. (Items 4, 6; Answer; Response)

The delinquent debts consist of a bank debt of \$13,301; another bank debt for \$14,491; a third bank debt for \$11,381; a fourth debt of \$1,832; a credit card debt for \$761; another debt for \$81; a seventh debt for \$8,180 owed to a bank; and an eighth debt owed to a bank for \$1,812. (Items 1, 4-9)

Applicant made two payments on the first debt of \$13,301 (Subparagraph 1.a). This bank debt was opened in August 2003. He admitted this debt. One payment for \$1,625 was made on November 26, 2013. Another payment for \$300 was made on May 15, 2014. This debt is not resolved. (Item 4)

Applicant made two payments on the second debt for \$14,491.00 as listed in the SOR (Subparagraph 1.b). Applicant's claimed payments of \$1,925 means the debt is \$12,566, which is more than Applicant claims the write-off of the debt was at \$12,015.30. This bank debt was opened in September 1999. Applicant told the government investigator in July and August 2013 he was unaware of this account because his wife opened it. He promised to pay it by the summer of 2014. He admitted this debt when he told the investigator that he and his spouse knew about the debt now. Applicant's first payment was made on December 16, 2013, in the amount of \$1,625; and a check for \$300 on May 16, 2014. This debt is not resolved. (Items 4, 6)

Applicant denies the third debt because he claims he paid \$10,515.78 on January 8, 2014, on the debt of \$11,381 (Subparagraph 1.c). The credit reporting agencies report a balance due on this account of \$500. Applicant disputes that amount. If he is unsuccessful in his dispute he stated he would pay the debt. This debt is being resolved. (Item 4)

Applicant also denies the fourth debt for \$1,832 (Subparagraph 1.d). He claimed he paid \$1,500 in October 2011. This account was opened in 2007. The credit reports show \$267 owed on this account. Applicant will dispute this amount and pay it if he is unsuccessful in his contest of this amount. This debt is being resolved. (Item 4)

Applicant denies the fifth debt in the amount \$761 (Subparagraph 1.e). He claims it was sold by the original creditor and the balance paid in full. The debt originated in 2008. The credit report submitted by Applicant shows the account was sold and closed. It was charged off and does not show the debt was paid in full at any time. The debt shows as zero owed because it was sold and Applicant did not pay it. This debt is unresolved. (Item 4)

The sixth debt was for \$71.82 (Subparagraph 1.f). Applicant claimed it was the balance on a \$17,000 loan that was paid in full on January 31, 2011. Applicant also asserted he paid the balance on May 23, 2014, and submitted a document to prove it. The credit reports in the file from June 2014 and January 2013 each show a balance of \$119. The credit report submitted by Applicant in his Response to the FORM shows a balance of \$119 and a past due amount of \$81. The account was opened in 2004. This debt is substantially resolved. (Items 4, 7-9)

Applicant denies the seventh debt for \$8,180 because he claims he paid the debt in the amount of \$8,044.31 (Subparagraph 1.g). This account was opened in 2006. Applicant told the government investigator in July and August 2013 that his wife opened this account and he did not know how the money was used by her. Applicant submitted documents, including a letter from the creditor stating that the debt was paid in full for the amount Applicant submitted. He also provided a copy of his check dated January 3, 2014. This debt is resolved. (Items 4, 6-9, Response)

The eighth and final debt was for \$1,812. Applicant denies this debt because he claims it was sold and paid in full (Subparagraph 1.h). This account was opened in 2008. There is no evidence the account was paid, but merely closed by the creditor. The credit report from June 2014 (Exhibit 7) shows this account as charged off and was transferred or sold to another creditor. This account is unresolved. (Items 4, 7-9, Response)

The unresolved accounts total \$26,999.30 based on the amounts listed in the SOR. They are the debts listed in the SOR in Subparagraphs 1.a, 1.b, 1.e, and 1.h. Applicant claims in his Response that he owes \$24,949.14. The accounts he actually paid total \$24,839.79. The earliest debt dates from 1999. The other accounts were opened throughout the decade starting in 2000. Applicant's wife claims her purchases incurred these debts, and Applicant knew nothing about them, meaning he was ignorant of over \$50,000 in debt she incurred in the past decade. Applicant told the government investigator that his wife had obtained full-time employment to earn money with which to repay these debts. If they are not paid by the summer of 2014, Applicant said he would take the money from his retirement accounts and repay the balance of the money owed so he could retain his security clearance. Applicant did not submit any documents showing that he took that action to repay the remaining portions of his delinquent debts or that his wife has a job earning sufficient money to repay the remaining delinquent debts. However, Applicant declared his commitment to repaying these debts and has made payments on them. He made substantial payments on the third, fourth, sixth, and seventh debts. (Items 1-9)

Applicant's credit reports show nearly \$40,000 borrowed from a credit union, and repaid over the same past decade. He has borrowed a significant amount of money during that time, paying some debts and leaving the ones listed in the SOR as delinquent. The statements by Applicant and his wife about his financial ignorance of their debts are credible when comparing his statements to the government investigator and his actions on loans and other borrowings about which he knew. (Items 1-9)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his

job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, 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 and mitigating conditions, which are useful 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, the administrative judge applies 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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."

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. 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 relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 1999 to the present, Applicant accumulated eight delinquent debts, totaling \$51,839, four of which remain unpaid or unresolved as of the date of the SOR.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two mitigating conditions might have partial applicability.

- (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;

(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; and,

(f) the affluence resulted from a legal source of income.

The debts incurred by his wife were unknown to Applicant. He maintained the consistency of that explanation in talking to the government investigator in 2013, and into 2014 when he answered the SOR and submitted his Response to the FORM. These debts, on which he has made payments, and about which he did not know because his wife hid them from him, were beyond his control. This is balanced with the regular repayments made on other debts, about which Applicant knew. He has now acted responsibly by repaying the debts, explaining that his wife is working a job to earn money with which to repay the debts, and there do not seem to be any other delinquent debts. AG ¶ 20 (b) applies under these unique circumstances.

Applicant repaid four of the eight listed delinquent debts. He has two minor debts remaining that he could repay shortly when he understands that a creditor charge off does not mean he has repaid the debt. The two other debts are significant and he made two good-faith payments on them. He needs to enter installment payment agreements using his wife's income to repay those debts in an orderly fashion. He paid \$1,925 on each debt. AG ¶ 20 (d) applies for his efforts to repay delinquent debts.

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 facts and circumstances surrounding this case. Applicant and his wife claim she incurred this \$51,839 worth of delinquent debt since 1999, and Applicant knew nothing about it. He was an adult when either of them incurred the debts. He has taken action to resolve half of his delinquent debts. He is committed to repaying the balance of the delinquent debts. This situation does not leave him vulnerable to pressure, coercion, exploitation, or duress because he made efforts to repay half his delinquent debts incurred by his wife without his knowledge.

While Applicant displayed a lack of good judgment in not engaging with his wife in regular discussions about their financial situation, he has taken remedial steps to repay the debts and keep better track of his debts to avoid the same situation occurring. He ceased using credit cards and told the government investigator he would not place himself in the same situation again where his security clearance is jeopardized. His credit reports show a consistent pattern of borrowing and repaying money during the past 15 years. He repaid the debts about which he knew, because he was involved in the borrowing process.

Overall, the record evidence leaves me without questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance based on his total record. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Financial Considerations. 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a to 1.h: 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.

PHILIP S. HOWE
Administrative Judge