



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



In the matter of:)	
)	
)	ISCR Case No. 14-00861
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

10/06/2015

Decision

WHITE, David M., Administrative Judge:

Applicant left active duty with a combat-related disability in 2013, with some debts remaining from his first marriage and divorce in 2010. He has successfully disputed or otherwise addressed them, has stable employment with surplus income, and has incurred no new delinquencies during the past five years. Resulting security concerns were mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on September 27, 2012.¹ On April 24, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² The action was taken

¹Item 4.

²Item 1.

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 (Answer) on May 28, 2014, 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 January 30, 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 April 8, 2015. He timely submitted additional material, which I admitted into the record as Applicant's Exhibit (AE) A, without objection by Department Counsel. I received the case assignment on June 24, 2015.

Findings of Fact

Applicant is 31 years old. He remarried in February 2011, about a year after his divorce from his first wife was finalized. He and his first wife have two children, who now reside with her. He and his current wife have a four-year-old daughter. He was honorably discharged for an enhanced combat-related disability after serving in the Army from January 2003 to May 2013, and received more than \$48,000 in severance pay. The present SOR was generated after an OPM investigation in connection with the SF 86 he submitted while still on active duty. He has since been hired by a major defense contractor and granted an interim clearance in connection with that position.⁵ In his Answer, Applicant admitted some, and denied others of the 11 allegations of delinquent debts, with explanations.⁶ Department Counsel agreed with Applicant's contention that SOR ¶¶ 1.b and 1.j are duplicate allegations of the debts alleged in SOR ¶¶ 1.a and 1.c, and withdrew SOR ¶¶ 1.b and 1.j in footnote 7 of the FORM.

Applicant's debts fall into several categories. The debt alleged in SOR ¶ 1.a (and b) pertained to an apartment lease he entered into in January 2013 and terminated, with

³Item 3.

⁴The Government submitted seven Items in support of the SOR allegations. Item 5 contains a summary of an interview from the Office of Personnel Management (OPM) Report of Investigation. It is inadmissible in evidence without either a witness' authentication or adoption by Applicant per Directive ¶ E3.1.20. Neither appears in this record so Item 5 is inadmissible. It was not considered in reaching this eligibility decision.

⁵Item 3; Item 4; AE A.

⁶Item 3.

required notice, in June 2013. Applicant provided the final account statement from the landlord showing a zero balance due. This debt is resolved.⁷

Most of Applicant's prior financial problems arose during the latter years of his first marriage, during his overseas combat deployments or as a result of his subsequent divorce. The former \$1,029 joint credit card debt alleged in SOR ¶ 1.c (and j); the \$3,814 joint loan alleged in SOR ¶ 1.d; the \$531 collection agency debt for a former telephone bill alleged in SOR ¶ 1.e; the \$2,094 installment loan alleged in SOR ¶ 1.h; and the \$113 cable service bill alleged in SOR ¶ 1.i; were accounts opened between 2005 and 2007, that became delinquent in 2007 or 2010 while his first wife was supposed to be managing the family finances. The \$399 clothing store account alleged in SOR ¶ 1.k falls into this same category, and was specifically assigned to his ex-wife in their divorce decree. Applicant, after leaving active duty and obtaining his present employment, wrote to each of the creditors involved in these debts to determine their present status. He received no response from any of them, presumably due to the age, uncollectible nature, and/or charged-off status of the debts.⁸

The \$76,227 delinquency alleged in SOR ¶ 1.f arose from the first mortgage loan on the home he purchased jointly with his first wife with a VA-guaranteed loan in October 2007. Payments toward this loan became delinquent in 2008, and their February 2010 divorce decree ordered that they be equally liable for any remaining debt resulting from the foreclosure of their marital residence. Due to the foreclosure-practice problems encountered by the creditor bank, and his ex-wife's initial reluctance to cooperate in any negotiated resolution, this mortgage debt remains unresolved. However, Applicant documented his recently pending arrangements to resolve it through execution of a deed-in-lieu of foreclosure.⁹

The \$2,549 debt to an armed forces exchange credit card account, alleged in SOR ¶ 1.g, is based on an August 2013 report to a credit bureau. Applicant was told that the debt would be paid out of his final severance pay in 2013, but that did not occur. In May 2014, the Department of the Treasury applied his \$2,236 income tax refund for tax year 2013 toward this debt, with a resulting balance of \$313. Applicant subsequently contacted the original creditor to arrange payment of that balance, and was referred to the collection agency to which the debt had been assigned with the intention of paying it in full once they respond.¹⁰

Applicant obtained financial counseling around the time he left active duty, and provided two detailed budget statements reflecting his post-service family income and expenses. These documents reflect a monthly family surplus ranging from \$2,138 to

⁷Item 3; AE A.

⁸Item 3; Item 6; Item 7; AE A.

⁹Item 3; Item 6; Item 7; AE A.

¹⁰Item 3; Item 7; AE A.

\$3,372, generating more than sufficient funds to continue his post-service pattern of meeting all financial obligations and resolving previous debts since his remarriage.¹¹

Applicant's former Army Officer in Charge, who has known him for five years, wrote a highly commendatory letter describing Applicant's character, intellect, leadership, and professional accomplishments. During his service he earned the Afghanistan Campaign Medal with three campaign stars, two Army Commendation Medals, three Army Achievement Medals, the Meritorious Unit Commendation, two Army Good Conduct Medals, and numerous other campaign and service awards.¹²

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."

¹¹Item 3; AE A.

¹²AE A.

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 is sufficient to have raised, 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's SOR-alleged debts arose prior to or in conjunction with his 2010 divorce from his first wife. He was both deployed overseas and had insufficient income to permit their resolution until leaving active duty and obtaining his current employment in 2013. This evidence raised security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five 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;

(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 has incurred no new delinquencies since obtaining his present employment in 2013, and he has paid, disputed, or otherwise resolved the SOR-alleged debts. His former debts largely resulted from his former wife's conduct during his military deployments and their subsequent divorce. He obtained financial counseling, and has acted responsibly by contacting all former creditors to pursue resolution of each of the debts since obtaining his present employment. He has not incurred any new delinquencies during the past five years, and has more than sufficient income to continue practicing financial responsibility. Applicant's financial situation does not cast doubt on his current reliability, trustworthiness, or good judgment. The evidence therefore establishes substantial mitigation under each of the foregoing mitigating 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 is an accountable and mature adult, who has steady post-service employment and has resolved the security concerns expressed in the SOR while incurring no new delinquencies during the past five years. He was honorably discharged after ten years of service with a combat-related disability. He has demonstrated significant trustworthiness, responsibility, and dedication to the national security. No potential for pressure, coercion, or duress from his former debts continues to support security concerns, and financial delinquencies are unlikely to recur.

The record evidence leaves me without 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.k:	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.

DAVID M. WHITE
Administrative Judge