



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



In the matter of:)
)
) ISCR Case No. 14-01201
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: Lawrence Miller, Esq.

August 29, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 33-year-old employee of a defense contractor. He is alleged to be indebted to four creditors in the approximate amount of \$16,757. He has acted responsibly with respect to his debts by resolving all but one of his delinquencies. He contested the remaining debt and it no longer appears on his credit report. Additionally, security concerns were raised because Applicant failed to disclose his debts and judgments relating to two of those debts on his electronic Security Clearance Application (e-QIP). The omissions were unintentional. Eligibility for access to classified information is granted.

Statement of the Case

On October 2, 2013, Applicant submitted an e-QIP. On May 1, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, Financial Considerations and E, Personal Conduct. 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 29, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on July 14, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 14, 2014, scheduling the hearing for August 7, 2014. The hearing was convened as scheduled. The Government offered hearing exhibit (HE I) and Exhibits (GE) 1 through 6. GE 1 through 3 were admitted without objection. GE 4 through 6 were admitted despite Applicant's objections to staleness and lack of authentication. (Tr. 28-34.) Applicant offered Exhibits (AE) A through F, which were admitted without objection. Applicant testified on his own behalf and called one witness. The record was left open for Applicant to submit additional exhibits and on August 20, 2014, Applicant presented one additional exhibit marked AE G. Department Counsel had no objections to AE G and it was admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on August 18, 2014.

Findings of Fact

Applicant is a 33-year-old employee of a defense contractor. He has worked for his employer since 2013. He served in the Navy from 2000 to 2010 and achieved the rate of E-5. He held a security clearance in the Navy, without incident. He is separated from his wife and has custody of their two children. He filed for divorce in 2010, but a final decree has not yet been issued. (GE 1; Tr. 42-45.)

As stated in the SOR, Applicant was alleged to be indebted four creditors in the approximate amount of \$16,757. Applicant denied the debts listed in subparagraphs 1.a, 1.b, and 1.c of the SOR. He admitted the debt in subparagraph 1.d, with explanations. He also denied falsifying his e-QIP by omitting his debts and judgments as alleged in subparagraphs 2.a and 2.b. 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 3; GE 4; GE 5.)

Applicant was indebted on a judgment filed against him in March 2007 in the amount of \$2,825, as alleged in subparagraph 1.a. This debt was the result of a cleaning fee incurred when he moved out of the apartment he occupied with his wife, upon their separation. He provided an Acknowledgment of Satisfaction of Judgment showing that this debt was satisfied in full on December 3, 2012. He testified that he could not afford to repay this debt until then. This debt is resolved. (AE A; AE F; Tr. 46-47, 69-71.)

Applicant was indebted on a judgment filed against him by a credit union in the amount of \$11,175, as alleged in subparagraph 1.b. Applicant became liable on this debt as a co-signer when his wife defaulted on a car loan after their separation. The vehicle was repossessed and Applicant was held liable for the remainder due on the loan. Applicant began making \$300 per month payments on this judgment in 2008. He satisfied this judgment in full on November 20, 2012. He presented an Acknowledgment

of Satisfaction of Judgment that shows this debt is resolved. (AE B; AE F; Tr. 50-51, 71-72.)

Applicant was indebted on a medical debt in the approximate amount of \$303 as alleged in subparagraph 1.c. He was unaware of this debt until the investigative agent who interviewed him regarding his security clearance application asked him about the delinquency. He contacted the creditor and satisfied the debt on May 27, 2014. He provided a receipt from the creditor to show this debt is resolved. (AE C; AE F; Tr. 52-55, 73-74.)

Applicant has been in ongoing communications with a cell phone company regarding his \$2,454 debt stated in subparagraph 1.d. This debt was incurred when he was deployed in 2009. Prior to his deployment, he negotiated an international calling plan with his cellular company. When he returned, he discovered the cellular company had significantly over-billed him. He testified he hired a credit repair service to contest his debts on his behalf because he wanted to increase his credit score. This debt no longer appears on his two most recent credit reports, however he is willing to repay this debt. Applicant has acted responsibly with respect to this debt. (GE 5; GE 6; AE F; Tr. 55-59, 75.)

Personal Conduct security concerns arose out of Applicant's failure to disclose his judgments identified in subparagraphs 1.a and 1.b, and his failure to disclose debts over 120 days delinquent as identified in subparagraphs 1.a through 1.d, on his October 2, 2013 e-QIP. Section 26 of the e-QIP asked have any of the following happened to you, "**In the past seven (7) years**, you had a judgment entered against you. (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor.); and, "**In the past seven (7) years**, you have been over 120 days delinquent on any debt not previously entered? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor.)" Applicant answered the sections that included both of these questions, "No." He explained that he misread or misunderstood the questions, because he thought that they only were inquiring about delinquent debt. He had paid off his judgments and disputed his debt through the credit repair service prior to completing the e-QIP, and did not realize he needed to list them. He was unaware of the medical debt when he completed the e-QIP. In light of his past disclosure to the government concerning the judgment in 1.b while in the Navy, and his disclosure of a prior arrest on his e-QIP, his testimony was credible. He did not intentionally answer these questions incorrectly. (AE F; Tr. 58-61, 79-81.)

Applicant presented two letters of recommendation from his supervisor and a co-worker. They recognized Applicant for his outstanding performance at work. His supervisor also testified on Applicant's behalf. His supervisor noted Applicant has a strong work ethic and is a valued employee. Applicant's DD-214 reflects that he was awarded the National Defense Service Medal, the Global War on Terrorism Medal, the Sea Service Deployment Ribbon, three Good Conduct Medals, the Navy "E" Ribbon, Navy Unit Commendation, Armed Forces Expeditionary Medal, the Meritorious Unit

Commendation, and three Navy and Marine Corps Achievement Medals, during his military service. (AE D; AE E; AE G; Tr. 34-44, 66.)

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 became delinquent on four financial obligations totaling \$16,757 in 2007 to 2009, after his separation from his wife. He was unable to resolve the judgments until 2012. He satisfied the medical debt in 2014. The Government established that Applicant had a history of not meeting financial obligations from 2007 to 2014. The Government established a case for disqualification under Guideline F.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial obligations. Two are 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The Appeal Board has held, "A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."¹ Security clearance adjudications regarding financial issues are not debt collection proceedings. Rather, the purpose is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."²

¹ ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003).

² AG ¶ 2(a)

Applicant's two judgments, which represent the majority of his debt, arose out of unique situations as a result of his separation from his wife. He has filed for divorce. Similarly, the cellular phone bill resulted from international charges incurred during a deployment. Applicant is no longer in the Navy and is unlikely to be deployed. He now monitors his credit and is working to increase his credit score. His financial difficulties are unlikely to occur again and they do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

Applicant has acted responsibly and made a good-faith effort to repay his creditors by contacting his creditors identified in subparagraphs 1.a, 1.b, and 1.c. He satisfied these three debts. He disputed his remaining account in good faith, and it has been removed from his credit report. AG ¶ 20(d) applies.

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to identify his SOR-listed judgments and debts on his e-QIP. However, his omission was not intentional. He misunderstood the questions and thought they only were asking about delinquencies. He knew of no delinquencies at the time he completed his e-QIP. Evidence reflects that he had previously provided details about one of his judgments during a previous security clearance investigation while he was in the Navy. He also disclosed a prior arrest that he was highly embarrassed about. His testimony that he unintentionally omitted his judgments and debts was credible and does not raise a security concern.

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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected by his supervisor and colleague. He performs well at his job. He served in the Navy, honorably, for 10 years. He has never had a security violation, though he has held a clearance in the past. His financial difficulties are largely attributable to his marital separation. He has acted responsibly by repaying his debts and enlisting the aid of a credit repair service. There is little likelihood of recurrence.

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

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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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