



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



In the matter of:)	
)	
)	ISCR Case No. 14-01195
)	
)	
Applicant for Security Clearance)	

Appearances

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

08/26/2015

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated three delinquent debts totaling \$33,665. He paid one \$1,075 debt. The other two debts are being resolved through the court in a post-dissolution proceeding with his former wife. Financial security concerns are sufficiently mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On October 9, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On October 7, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (financial considerations). 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 for SORs issued after September 1, 2006.

On February 17, 2015, Applicant answered the SOR (Answer), and requested a hearing. On April 27, 2015, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On June 5, 2015, DOHA issued a hearing notice, setting the case for June 30, 2015. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and offered Applicant Exhibits (AE) 1 through 5 into evidence. All exhibits were admitted. Applicant testified. The record remained open until July 20, 2015, to give Applicant time to submit additional information from his lawyer. I extended that deadline to August 17, 2015, because Applicant had not yet received the requested information from his lawyer. I subsequently received a letter from Applicant's lawyer on July 27, 2015, which I marked as AE 6 and admitted into the record without objection from Department Counsel. DOHA received the hearing transcript (Tr.) on July 9, 2015.

Findings of Fact

Applicant admitted the three allegations contained in the Statement of Reasons and provided explanations. His admissions are accepted as factual findings.

Applicant is a 45-year-old employee of a defense contractor. He is a high school graduate. He completed an apprenticeship. He is divorced since 2010. He has two children, ages 17 and 19. (Tr. 15-16.) He has had custody of his children since 2012. His former wife does not provide child support. (Tr. 37-38.) He started his current position in 2010. Prior to this job, he was unemployed for eight months having been laid off from a position he held for nine years. (Tr. 18.)

Applicant has been involved in contentious post-dissolution proceedings with his former wife since their divorce. The SOR alleged three debts totaling \$33,665. Applicant attributed two of the three debts to his divorce. The status of each debt is as follows:

Applicant paid the \$1,075 judgment for a medical debt on March 11, 2015. (SOR ¶ 1.a; Tr. 30; AE 3.)

The \$32,369 debt is owed to a bank for a second mortgage on Applicant's prior marital residence. Applicant and his former wife are in a legal proceeding to determine which party is responsible for paying this debt and for what amount. Applicant's attorney verified this ongoing dispute. (AE 6.) The attorney also verified that Applicant is seeking to reduce the amount owed on the basis that the bank foreclosed and sold the property in March 2010 for \$162,000, for more than the primary mortgage's balance of \$156,000. Applicant will pay this debt if ordered by the court. (SOR ¶ 1.b; Tr. 24-27, 36; AE 6.)

The \$221 medical debt is owed to his former wife's doctor. It is also an issue in the post-dissolution proceeding. He will pay it if ordered by the court. (SOR ¶ 1.c; Tr. 31-32; AE 6.)

Applicant's annual base salary is \$80,000. In 2014 he earned between \$116,000 and \$120,000. (Tr. 32.) He does not have any delinquent debts other than the secondary mortgage. His utilities and other expenses are current. (Tr. 34.) He makes monthly payments on a motorcycle loan through a bank credit card. He has two other credit cards, one of which has a zero balance, and the other has a \$2,000 balance. (Tr. 35.) He does not spend money that he does not have. (Tr. 36.) He lives in his father's former home. He is purchasing it from his father's estate. (Tr. 39.)

Applicant submitted a letter of recommendation. His manager for the past five years stated that Applicant "has been an outstanding mechanic and is a proven leader in our organization." (AE 4.) He has "personally relied on [Applicant's] work ethic, knowledge, and performance on a daily basis to make our team successful." (AE 4.)

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 (AG) 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, 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."

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 relating to the guideline for financial considerations are set out in AG ¶ 18, which reads:

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.

Since 2010 Applicant accumulated delinquent debts that he has been unable or unwilling to resolve. The evidence is sufficient to raise both disqualifications, 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 delinquent debts:

- (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 offered evidence that the two unresolved delinquent debts are related to property settlement issues from his 2010 divorce. Those circumstances are unique, unlikely to recur, and beyond his control. Since the divorce, he has been involved in legal proceedings to resolve the debts. There is sufficient evidence to establish mitigation under AG ¶ 20(a) and AG ¶ 20(b). Applicant did not document participation in credit or other financial counseling. However, he presented evidence that his lawyer is working on a resolution for the two outstanding debts, which total \$32,590. His finances appear to be coming under control through the legal process. AG ¶ 20(c) has some application. He paid an outstanding judgment in March 2015, which demonstrated a good-faith effort to resolve the debt. AG ¶ 20(d) applies to that debt. Applicant has a reasonable basis to dispute the two debts and is doing so through the legal system. AG ¶ 20(e) is applicable for the two unresolved 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.

According to 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 a 45-year-old employee of a defense contractor since 2010. His supervisor strongly recommends him for a security clearance based on his observations of Applicant's work ethic. Since his divorce in 2010, he and his former wife have been involved in post-dissolution matters, which include the largest SOR alleged debt for \$32,369 and a smaller debt for \$221. His lawyer confirmed the dispute. Applicant paid a third debt of \$1,075, and stated that he will pay the remaining debts if ordered by the court. There is no evidence in the record, which would lead me to conclude that he will not honor a legal obligation, if so ordered. There is no evidence indicating that the two outstanding debts create a potential for pressure, exploitation or duress.

Overall, the record evidence leaves me without doubt or concerns as to Applicant's present eligibility and suitability for a security clearance. Given his awareness of the potential negative effect additional delinquent debts could have on his employment, the likelihood that similar issues will occur is minimal. Applicant sufficiently met his burden to mitigate the security concerns arising from 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 to 1.c:	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.

SHARI DAM
Administrative Judge