



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



In the matter of:)	
)	
)	ISCR Case: 14-01608
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

April 29, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant accumulated three delinquent debts totaling \$26,395. He has resolved all three delinquencies. Resulting security concerns were mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Statement of Case

On November 21, 2013, Applicant submitted a security clearance application (e-QIP). On June 25, 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant responded to the SOR (Answer) on July 21, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) Department Counsel submitted the Government's written case on January 21, 2015. A complete copy of the File of Relevant Material (FORM), containing six Items, was received by Applicant on March 2, 2015. 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. He provided additional information in response to the FORM within the 30-day period, marked as Applicant's Exhibit (AE) A. Department Counsel had no objections to AE A, and it was admitted into the record. DOHA assigned the case to me on April 8, 2015.

Findings of Fact

Applicant is 54 years old. He has been employed with a Government contractor since 2002. He served on active duty with the Navy from March 1983 to February 1999. He is married to his second wife and identified no children. (Answer; Item 4.)

The SOR alleges Applicant owes approximately \$26,395 in delinquent debt to three creditors. In his Answer, Applicant admitted all of the debts in SOR ¶¶ 1.a through 1.c. (Item 2.) His debts are also documented in the record credit report dated November 28, 2013. (Item 5.) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant attributed the debts to his first wife's unemployment in 2007, his separation and subsequent divorce from his first wife, and to a housing remodel that went over budget. He claims he does not live above his means. He does not gamble. He makes approximately \$120,000 per year. (Answer.)

Applicant is alleged to be indebted on a charged off account in the amount of \$15,013, as stated in SOR ¶ 1.a. This debt had been delinquent since at least 2008. In AE A, Applicant claimed that his debt was paid with the assistance of a debt settlement company he hired. The debt settlement company is no longer in business. He hired a second debt settlement company, which made an inquiry into this debt and was told the account had "no balance." This debt does not appear on Applicant's March 30, 2015 credit report. This debt is resolved. (Answer; Item 5; AE A.)

Applicant is alleged to be indebted on a delinquent credit card account in the amount of \$9,829, as listed in SOR ¶ 1.b. This debt has been delinquent since at least 2008. A letter from this creditor, dated July 15, 2014, indicates that this debt "has been paid." This debt is resolved. (Answer; Item 5; AE A.)

Applicant is alleged to be indebted on a credit card account in the amount of \$1,553, as listed in SOR ¶ 1.c. This debt had been delinquent since at least 2009. Applicant's March 30, 2015 credit report reflects this debt as a derogatory collection account. However, Applicant produced a July 2, 2014 letter from this creditor offering to

settle this debt for \$800, and his cancelled check to the creditor in that amount dated July 8, 2014. Applicant has resolved this account in good faith. (Item 5; AE A.)

Applicant filed Chapter 7 bankruptcy in December 2009, but had it dismissed in April 2010. He indicated that he has been working to repay his debts for years and that he suffered a setback when his first debt management company went out of business. He has remarried and bought a new home. He is attempting to rebuild his credit. (Item 5.)

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 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 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.

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 2008, Applicant accumulated \$26,395 in delinquent debt that he was unable or unwilling to satisfy. The evidence raises security concerns under both conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. I find the following provide mitigation:

- (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's financial problems are resolved and his finances appear to be under control. He utilized the services of two different debt management firms to resolve his past-due indebtedness. He does not live beyond his means, and earns a sufficient income which should enable him to avoid future delinquencies. He has acted responsibly with respect to his debt by resolving each debt, despite incorrect reporting on his credit report. The security concerns with respect to his former financial delinquencies are mitigated.

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 served honorably in the Navy from March 1983 to February 1999. He experienced financial difficulties in 2007 and 2008, due to problems beyond his control, such as his wife's unemployment and their divorce. However, his financial problems also resulted from choices he made to remodel a home. Despite those financial difficulties at that time, Applicant has worked to resolve the delinquencies. While it took him until 2014 to resolve all of his debts, he has demonstrated a commitment to remaining solvent. Overall, 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 under the guideline for 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.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.

Jennifer I. Goldstein
Administrative Judge