



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



In the matter of:)	
)	
)	ISCR Case No. 14-02343
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

04/20/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On October 2, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on January 29, 2015. A notice of hearing was issued on February 26, 2015, scheduling the hearing for April 3, 2015. Government Exhibits (GX) 1-5 were admitted into evidence without objection. Applicant testified and submitted Exhibits AX A through E, which were admitted into the record. The transcript was received on April 14, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted half the SOR allegations and denied half, with explanations.

Applicant is a 30-year-old employee of a defense contractor. He has an associate's degree from a community college. Applicant obtained his undergraduate degree in 2014. Applicant worked full time while attending those classes at night. He is starting to take courses in information technology (IT), so that he may become more marketable. Applicant has been employed with his current employer since January 2014. He held a position of public trust, but this is his first application for a security clearance. (GX 1)

Applicant is single and has no children. He takes care of his mother and father. (Tr. 36) Applicant provides financial support to his mother by paying her rent and groceries. He sends his father about \$200 about once a month. (Tr. 36) Before his current job, Applicant had a series of low paying jobs. He also had jobs where he had fewer than full-time hours. Some weeks he would only work about 22 hours. (Tr. 35) Applicant has been applying for part-time jobs to supplement his income. He has an interview for a security guard position. (Tr. 77)

The SOR alleges seven delinquent debts in the total amount of about \$12,000, but Applicant admits to three of the debts totaling \$6,600. (GX 2) .

Applicant explained that when he learned about some delinquent accounts on his credit report, he reached out to the creditors and established a payment plan. He also paid some that he was able to pay. One of the debts was a student loan and Applicant is paying monthly with an established payment plan. (Tr.10; AX G)

Applicant has a 2012 judgment in the amount of \$4,413 resulting from surgery. (GX 4) He was not aware of the judgment until he received the SOR. Applicant tried to resolve the debt with the insurance company. He had a payment plan and was sending them \$50 monthly. He stopped the payments when he learned that there was an error with the insurance billing. Applicant asked for a statement from the rehabilitation company, but they never provided one. (Tr. 42) He is waiting for a response to resolve the issue. He intends to settle the account, but needs an explanation from the insurance company. (Tr. 29) He is disputing the bill. (Tr. 68)

Applicant believes the debt alleged in SOR 1.b, a 2007 judgment in the amount of \$1,814, is fraudulent. There is a consent judgment but Applicant could not recall the particulars. He stated that he made three payments, but stopped because he did not want to pay for something that was not his bill. He remembers giving \$50 last year. This account no longer appears on his credit account. (AX E) Applicant later learned that his roommate may have had something to do with the credit card.

As to SOR 1.c, a collection account in the amount of \$444, Applicant recently settled the medical account for \$230. He provided documentation that reflected a zero balance for the account. (AX C and D)

Applicant provided documentation for the alleged debts in SOR 1.d through 1.g to three creditors. They are also associated with his surgery. When Applicant contacted the company he received the statements that show a zero balance. (AX A, B and F) He offered these statements as evidence.

Applicant earns approximately \$2,800 net a month. He has applied for a part time job. He sometimes has a negative net monthly remainder. He now has a roommate to help with expenses. Sometimes his girlfriend helps with expenses. He has not received financial counseling.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted he owes delinquent debts as reported in his SOR. He settled some non-SOR debts. He still has an unresolved debt. His credit reports confirm the debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and (FC DC) AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

Applicant had surgery in 2011 and the bills that are delinquent are the result of the surgery and the rehabilitation. He was unaware of the judgment related to the debt. That account is still unresolved. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies. Applicant had surgery and rehabilitation. He had insurance at the time. He contacted the insurance company and the company that billed him. He tried to pay what he could in the beginning, but he stopped because he was not sure of the validity of the bills. He has submitted documentation that the majority have been settled. This mitigating condition applies.

(FC MC) AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant took steps initially with payment plans. He explained why he stopped the payments. He has settled the medical accounts. He is still working to resolve the judgment. He did not ignore the accounts. (FC MC) 20(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) partially applies.

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 30 years old. He has worked hard to obtain an undergraduate degree. He is still taking classes to better his job opportunities. He helps his parents. He recently obtained a permanent job. He has worked in a variety of positions, and some have been low paying. He provided documentation to prove that the medical accounts have been resolved. The delinquent bills did not result from frivolous spending. He had surgery. He disputes the judgment that may be the result of fraud.

Applicant has met his burden to overcome security concerns under the financial considerations guideline. I believe that he has acted responsibly. I have no doubts about his current reliability and judgment. Clearance is granted.

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
Subparagraphs 1.a-1.g:	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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge