



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-02688
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

03/04/2016

Decision

HOGAN, Erin C., Administrative Judge:

On December 2, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing the 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 December 22, 2014, Applicant answered the SOR and requested that his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on July 6, 2015. The FORM was forwarded to Applicant on July 14, 2015. Applicant received the FORM on July 24, 2015. He had 30 days to submit a response to the FORM. He timely submitted a Response to FORM on August 18, 2015 which is admitted as Item 9. On September 16, 2015, the FORM was forwarded to the hearing office and was assigned to me on September 22, 2015.

Upon reviewing the case file and the Response to Form, on November 4, 2015, I issued an Order reopening the record until December 15, 2015, to allow Applicant to submit additional documents. (HE I). On December 14, 2015, Applicant requested an extension. I granted an extension until January 8, 2016 Applicant requested an additional extension until February 1, 2016, which was granted. He timely submitted the additional documents. Due to an error with the mail, the package was returned to Applicant labeled as "Return to Sender" through no fault of the Applicant. I gave Applicant additional time to mail the documents to DOHA's post office box. The documents arrived and were admitted as Item 10.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Rulings on Evidence

Item 6 of the FORM is a portion of the Report of Investigation (ROI) from the background investigation of Applicant. The five-page document is a summary of interviews of Applicant on February 7, 2014, and March 5, 2014, in conjunction with his background investigation. DoDD 5220.6, enclosure 3, ¶ E3.1.20 states, "An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence." (See ISCR Case No. 11-13999 (App. Bd., February 3, 2014)). Item 6 is not authenticated.

Although Applicant, who is representing himself, has not raised the issue via an objection, I am raising it *sua sponte*. Applicant's failure to mention this issue in a response to the FORM is not a knowing waiver of the rule. Waiver means "the voluntary relinquishment or abandonment – express or implied – of a legal right or advantage. The party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." *Black's Law Dictionary* 1717 (Bryan A. Garner, 9th ed., West 2009).

While the Government attempted to explain why Applicant could object to the admissibility of Item 6, I cannot conclude Applicant was expressly informed of the requirement in ¶ E3.1.20 of the Directive because it was explained in a footnote. It is not unusual for Applicants to forego reading footnotes in a FORM. I cannot conclude Applicant expressly waived this rule. I find Item 6 is not admissible and it will not be considered in this decision.

Findings of Fact

In his answer to the SOR, Applicant admits to all of the SOR allegations. (Item 4)

Applicant is employed by a Department of Defense contractor, seeking to maintain a security clearance. Applicant has been employed with the company since December 2013. He is a high school graduate. He attended college, but did not earn a degree. He is single and lives with his fiancé and her 13-year-old daughter. (Item 2)

Applicant completed an electronic questionnaires for investigations processing (e-QIP) on December 30, 2013. (Item 2) In response to section 26, Financial Record, Applicant listed several delinquent accounts. (Item 2, section 26) A subsequent background investigation revealed Applicant had nine delinquent accounts, with a total approximate balance of \$25,928. (Items 7-8)

The debts consist of: a \$6,510 credit card judgment filed against Applicant in 2012 (SOR ¶ 1.a: Item 7 at 2; Item 8 at 1); a \$4,377 account placed for collection by a bank (SOR ¶ 1.b: Item 7 at 3, 6; Item 8 at 2); a \$2,514 account placed for collection by a bank (SOR ¶ 1.c: Item 7 at 3, 6; Item 8 at 1); a \$2,710 account placed for collection (SOR ¶ 1.d: Item 7 at 4; Item 8 at 2); a \$4,120 department store credit card account placed for collection (SOR ¶ 1.e: Item 7 at 5; Item 8 at 2); a \$209 eyeglass store account placed for collection (SOR ¶ 1.f: Item 7 at 5; Item 8 at 1); a \$567 jewelry store account placed for collection (SOR ¶ 1.g: Item 7 at 5; Item 8 at 2); a \$4,025 account placed for collection by a bank (SOR ¶ 1.h: Item 7 at 6; Item 8 at 1); and an \$896 credit card account placed for collection (SOR ¶ 1.i: Item 7 at 6).

In his response to the SOR, Applicant mentioned that he encountered financial problems because he was not making enough money to pay his credit cards as well his daily living expenses. He chose to pay his daily living expenses. He intends to pay down his debts and pays what he can. He is currently paying \$75 a month towards the debt alleged in SOR ¶ 1.a. He pays \$25 a month towards the debt alleged in SOR ¶ 1.b. He also pays \$65 a month towards the debt alleged in SOR ¶ 1.i. (Item 4)

Applicant says that the income from his new job will help him satisfy debts. He is happy to have his job and to be contributing to the military. He is attempting to resolve the debts as best as he can and will continue to do so for as long as the debt remains. (Item 4) It should be noted that Applicant had a period of unemployment between July 2011 to December 2011. (Item 5, section 13A)

In his response to the FORM, Applicant provided copies of the payment histories for the three collection agencies he has been making monthly payments to for the past few years for the debts alleged in SOR ¶¶ 1.a, 1.c, and 1.i. He mentioned that he is taking out a line of credit in order to consolidate the debt. He provided documents to show that he and his mother applied for a \$75,000 Home Equity Line of Credit. He and his mother co-own the house that he lives in. When the line of credit is approved, Applicant will pay off his delinquent accounts. Applicant estimated that he would be able to pay off the debts with the funds received from the line of credit within two to three weeks. (Item 9)

On November 4, 2015, I reopened the record, to allow Applicant the opportunity to provide proof that he paid off the delinquent debts. After various extensions, Applicant submitted additional documents. He mentioned that the bank denied the line of credit. His mother and stepfather loaned him \$16,242. He agreed to pay them \$340 a month beginning in March until the debt is paid off. Applicant has resolved all of the accounts with the exception of the debt alleged in ¶ 1.e. (Item 10 at 3-10) He entered

into a payment plan with the creditor, agreeing to pay \$100 monthly until the debt is paid in full. (Item 10 at 6)

The creditor cancelled the debt alleged in SOR ¶ 1.b in 2014. Applicant paid taxes pertaining to the debt cancellation. (Item 10 at 4) SOR ¶ 1.d is found for Applicant because it is a duplicate of the debt alleged in SOR ¶ 1.h. The receipt showing the debt is resolved in SOR ¶ 1.a is at Item 10 at 3. The receipt showing the debt is resolved in SOR ¶ 1.c is at Item 10 at 5. The receipt showing the debt is resolved in SOR ¶ 1.e is at Item 10 at 6. The receipt showing the debt is resolved in SOR ¶ 1.f is at Item 10 at 7. The receipt showing the debt is resolved in SOR ¶ 1.g is at Item 10 at 8. The receipt showing the debt is resolved in SOR ¶ 1.h is at Item 10 at 9. The receipt showing the debt is resolved in SOR ¶ 1.i is at Item 10 at 10.

Applicant provided a personal financial statement. His net monthly income is approximately \$2,895. His monthly expenses are approximately \$2,220, leaving him \$675 remaining each month. In addition, his fiancé contributes \$700 each month for food and house necessities. Once he begins to repay his parents his net monthly remainder will be \$335, if his fiancé's contributions are included, it will be \$1,035.

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 must be considered when 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 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 applicant or proven by Department Counsel. . . ." The

applicant has the ultimate burden of persuasion for obtaining a favorable security 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 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 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.” 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 relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant incurred several delinquent debts which he was unable to pay, because of low paying jobs.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several mitigating conditions potentially apply to Applicant’s case.

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) applies. Applicant has been working on resolving his delinquent debts for a period of three years. He was

under monthly payment plans with three of the debts. He ultimately decided to resolve all of his delinquent debts. He and his mother initially attempted to refinance the home that they co-own. Their application was denied, but Applicant was able to borrow money from his mother and step-father. He was able to pay off all of the debts alleged in the SOR with the exception of one debt. He is in a monthly repayment agreement towards that debt. Applicant's attempts to resolve his financial situation demonstrated good judgment, trustworthiness, and reliability.

AG ¶ 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) applies. While there is no evidence that Applicant received financial counseling, his financial problems are now under control. He borrowed money from his mother and step-father which he used to pay off all of the delinquent debts except one. He has a monthly repayment agreement for his one remaining delinquent account. His personal financial statement indicates he is able to meet his current financial obligations including his monthly payments towards the loan he received from his mother and step-father.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant provided proof that he was attempting to resolve his delinquent debts over a period of three years. He was in active payment plans on three of the debts for several years. He ultimately borrowed money from his mother and step-father to pay off most of the debts. His one remaining delinquent debt is being resolved through a monthly payment plan. Applicant made a good-faith effort to resolve his delinquent 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's employment with a defense contractor since 2013. I considered his efforts to resolve his delinquent debts over the past three years. Applicant's financial situation has improved and is now stable. He is able to meet his financial obligations. Applicant mitigated the concerns raised under financial considerations.

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.i:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge