



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



In the matter of:)	
)	
)	ISCR Case No. 14-04059
)	
)	
Applicant for Security Clearance)	

Appearances

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

06/29/2015

Decision

WHITE, David M., Administrative Judge:

Applicant incurred five delinquent debts, totaling about \$7,000, and fell behind on his mortgage payments, during more than a year of unemployment after retiring from the Navy. He has taken positive steps to address the delinquencies, and has substantially resolved them. Resulting security concerns were mitigated. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on September 30, 2013. On October 20, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on November 24, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 28, 2015. The case was assigned to me on February 2, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on February 25, 2015, setting the hearing date for March 18, 2015, and I convened the hearing as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection;¹ and Hearing Exhibit (HE) I, a Government exhibit list. Applicant offered Exhibits (AE) A through F, which were admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until April 8, 2015, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on March 26, 2015. Applicant timely submitted AE G, which was admitted without objection, and the record closed as scheduled.

Findings of Fact

Applicant is a 43-year-old employee of a defense contractor, where he has worked since August 2013. He is a high school graduate, who has taken some college classes. He honorably retired in June 2012 at pay grade E-6, after 20 years of active service in the Navy. He has held a security clearance since he first enlisted, without incident. He has three children, and is married for the second time. (GE 1; Tr. 6-8.)

Applicant admitted the factual allegations set forth in SOR ¶¶ 1.a through 1.c and 1.e through 1.g, with explanations. He denied SOR ¶ 1.d as being a duplicate listing of SOR ¶ 1.c, and SOR ¶ 1.h as having been paid shortly after it was incurred in October 2008. (AR.) Applicant's admissions are incorporated in the following findings.

Applicant was essentially unemployed for fourteen months after retiring from active duty, after moving to another state to look for work. He aggressively sought a job, and started several different positions that did not work out through no fault of his. At the end of this period, he and his family decided to move back to their home state, where he promptly found his present position. He had neither been able to sell his house nor make the mortgage payments on it while renting accommodations for his family in the other state, so they fell behind on their mortgage payments by about \$55,000. (SOR ¶ 1.a.) They financially survived during this period on the combination of his retired pay, about \$6,000 in savings, selling much of their personal property, his very modest earnings, and loans from the Navy-Marine Corps Relief Society that he has been regularly repaying from his retired pay. (AR; GE 2; Tr. 50.)

The \$4,874 delinquent debt alleged in SOR ¶ 1.b involves a major electronics retail store credit card account that Applicant opened in 2007, and was placed with the current creditor for collection. Applicant began making \$50 monthly payments toward

¹GE 2 is an interview summary from a Report of Investigation (ROI) that was offered without authentication by a witness. After I explained the requirements of Directive ¶ E3.1.20 to Applicant, and informed him that GE 2 would not be admitted unless he agreed that it was accurate and wanted it to be considered, he said that he found it to be accurate and had no objection to its admission or consideration. (Tr. 26-30.)

this debt under an agreement with the current creditor in July 2014, and continues to do so. The creditor no longer considers this account to be delinquent. (AR; GE 2; AE F; AE G; Tr. 37-38.)

The two allegations in SOR ¶¶ 1.c and 1.d describe the same delinquent debt for \$654 or \$655 to the public utility service company in the state where Applicant moved and unsuccessfully sought employment. When able to do so after gaining his current employment, in March 2015, he repaid this debt in full. (AR; GE 2; GE 3; GE 4; AE B; AE E; Tr. 44-47,61-62.) He also repaid the two delinquent cable internet service bills, totaling about \$1,000 as alleged in SOR ¶¶ 1.f and 1.g. (AE A; AE B; Tr. 31-33, 61-62.)

At the time of his hearing, Applicant had not begun to repay the \$439 utility bill that became delinquent in late 2012, as alleged in SOR ¶ 1.e. However, he reestablished service with that company in his home since moving back into it, and began making \$54 monthly payments toward that debt under an agreement with the creditor in late March 2015. (AR; GE 2; GE 3; AE G; Tr. 40, 63-64.)

The \$144 debt alleged in SOR ¶ 1.h started as a \$50 fine for failure to pull off the road and pay a bridge toll on a newly-built bridge project in 2008. Applicant mailed the payment for this fine right after he received it, and heard nothing further until it appeared on the credit report obtained in connection with his security investigation. He has researched the information necessary to dispute this erroneous claim (which was a very common problem in the early stages of this new tolling program), and submitted a dispute letter to the authority who can resolve the issue. If his dispute is denied, he will pay the fine again. (AR; AE G; Tr. 40-43.)

Applicant successfully negotiated a loan modification agreement with his mortgage holder to resume affordable mortgage payments and include his former delinquency into the remaining principle balance. While his budget is tight, he anticipates continuing to reduce nonessential expenses in order to comply with the modified loan terms. Given his track record of financial discipline to minimize delinquencies during more than a year of unemployment while supporting a family of five, I conclude that his stated intentions in this regard are credible. (AR; AE C; AE G; Tr. 39, 53-57.)

Applicant's regional project manager wrote a letter praising Applicant's outstanding professional performance, dedication, motivation to excel, and excellent character during their time working together. (AE G.) His testimony was credible, and he demonstrated a thorough understanding of his financial circumstances as well as his determination to continue improving them.

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 (DCs) and mitigating conditions (MCs), 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 under 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.

The record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant incurred five relatively minor delinquent debts, involving one credit card and four utility bills, during his unexpected period of unemployment after retiring from active duty. He also fell significantly behind on his mortgage loan payments. These facts provide substantial evidence under the foregoing DCs, thereby shifting the burden to Applicant to mitigate resulting security concerns. The SOR allegations and evidence do not support any other DC under this guideline.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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's financial problems arose due to his unexpected difficulty in finding post-service employment for about 14 months, during which he acted responsibly to minimize living expenses and sell assets on a limited income. He then obtained his current position where he is performing successfully. He has either resolved or is complying with acceptable agreements to repay all of the SOR listed debts, except for a 2008 bridge toll fine that he is legitimately disputing because he already paid it. Applicant accordingly established substantial mitigation for the SOR-listed financial concerns under each of the foregoing provisions.

"An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has "taken significant actions to implement that plan." ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). Applicant has successfully established a meaningful track record of debt resolution that continues to date.

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 pertinent facts and circumstances surrounding this case. Applicant is a sincere and mature individual, who has accepted accountability for his debts and resolved most of them. His positive actions to address both the sources and results of his indebtedness have substantially eliminated the potential for pressure, coercion, or duress, and make continuation or recurrence of significant financial problems unlikely. Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability for a security clearance.

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.h: 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's eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge