



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-05441
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

09/15/2015

Decision

HOGAN, Erin C., Administrative Judge:

On January 26, 2015, 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 February 25, 2015, 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 May 27, 2015. The FORM was forwarded to Applicant on June 15, 2015. Applicant received the FORM on June 25, 2015. He had 30 days to submit a response to the FORM. He timely submitted a Response to FORM which is admitted as Item 5. Department Counsel did not object to Applicant's Response to FORM. Department Counsel's response to Applicant's Response to FORM is admitted as Item 6. On August 11, 2015, the FORM was forwarded to the hearing office and was assigned to me on August 13, 2015.

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

Rulings on Evidence

Item 3 of the FORM is a portion of the Report of Investigation (ROI) from the background investigation of Applicant. The seven-page document is a portion of a summary of an interview of Applicant which occurred between January 14, 2014, and January 31, 2014, in conjunction with his background investigation. DoDD 5220.6, enclosure 2, ¶ 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)). In his response to the FORM, Applicant acknowledged Item 3 and clarified several inaccuracies in the document. In effect, he authenticated the document. For this reason, I admit Item 3 into evidence.

Findings of Fact

In his answer to the SOR, Applicant admits to SOR allegation 1.a and denies SOR allegation 1.b. (Item 1)

Applicant is a employed by a Department of Defense contractor, seeking to maintain a security clearance. Applicant has been employed with the company since 1997. The highest level of education he has achieved is a Master's Degree. He has held a security clearance without incident since 1996. He is single and has no children. (Item 2)

Applicant completed an electronic questionnaires for investigations processing (e-QIP) on April 22, 2013. (Item 2) In response to section 26, Taxes, of his e-QIP application, Applicant listed that he failed to file tax returns for 2007. He indicated he filed his 2007 taxes with his 2008 taxes. He also listed that he did not file federal taxes for tax years 2010 and 2011. He indicated that he "Missed the late filing date." He indicated he was owed refunds for both years and that he filed his taxes in April 2013. (Item 2, section 26).

Applicant's failure to file his 2010 and 2011 federal tax returns were alleged in subparagraph 1.a of the SOR. The allegation in subparagraph 1.b of the SOR alleged that an April 25, 2013, credit report listed a \$77 delinquent medical account. In his response to the SOR, Applicant admitted the allegation in SOR ¶ 1.a. He indicated that he was late filing his 2010 and 2011 tax returns. The tax returns were filed and he received refunds both years. He indicated he provided proof of payment in 2014. (The documents Applicant provided were not received or were misplaced because they are not in the file.) Applicant denies the medical debt alleged in SOR ¶ 1.b. He states the disputed insurance claim was paid in full in 2013. (Item 1)

In his response to the FORM, Applicant provided proof that he filed his 2010 and 2011 federal tax returns. He provided photocopies of his federal tax refund checks for

2010 and 2011. (Item 5 at 3-4) He also provided a copy of the receipt verifying the \$77 medical debt alleged in SOR ¶ 1.b is paid. (Item 5 at 5). The credit report, dated August 25, 2014, indicates Applicant has no delinquent accounts. (Item 4)

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(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same) apply to Applicant's case. The application of AG ¶19(a) applies with regard to the \$77 medical debt alleged in SOR ¶1(b). AG ¶19(g) applies because Applicant failed to file his 2010 and 2011 federal income taxes on time.

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's failure to file his federal taxes was because he filed them late as opposed to a deliberate failure to file his tax returns. He also received refunds for both years so he did not profit from filing his federal income tax returns late.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant provided proof that both concerns raised in the SOR are resolved. His taxes are filed. He does not owe the IRS any money. He paid the \$77 medical debt. The only reason the \$77 debt was not paid initially, was because Applicant was involved with a dispute with the insurance company. He believed the insurance company should have paid the bill. He paid the bill in order to resolve the issue.

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 1997. I considered he did not have significant financial problems. He was late filing his federal tax returns for 2010 and 2011. He has filed his tax returns and received refunds for both years. The only delinquent account was a \$77 medical bill, which he disputed with his insurance company. He paid the bill in order to resolve the issue. 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.b:	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