



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



In the matter of:)	
)	
)	ISCR Case No. 14-05693
)	
Applicant for Security Clearance)	

Appearances

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

09/29/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. The Statement of Reasons (SOR) alleges he was delinquent on two student loans totaling more than \$27,000 and five collection accounts totaling less than \$4,000. Applicant mitigated the financial considerations security concerns. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on January 24, 2015, the DoD issued an SOR detailing financial considerations security concerns. On March 4, 2015, Applicant answered the SOR (SOR Answer) and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA)

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated May 21, 2015. The FORM contained ten attachments (Items). On May 28, 2015, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. In an undated response, Applicant submitted documents that were admitted as Items A – E. DC had no objection to the material. On September 1, 2015, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he admitted owing the student loans and five other collection accounts. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 30-year-old aircraft technician who has worked for a defense contractor since February 2012, and seeks to obtain a security clearance. (Item 5) From October 2001 through October 2011, he honorably served in the U.S. Air Force obtaining the grade of staff sergeant (E-5). He left the Air Force for failing to pass the physical fitness test. From October 2011 until February 2012, he was unemployed. (Item 10) He provided no information about his duty performance and provided no character reference letters.

Starting in 1994, Applicant obtained a number of student loans while attending a technical institute, which totaled approximately \$30,000. His student loans were deferred during a portion of the time he was in the Air Force. In December 2001, he established a \$200 monthly allotment to pay the loans. (Item 8) After leaving the Air Force, the loans became delinquent while he was unemployed. In late 2013, the Department of Education obtained an order garnishing 15 percent of his wages monthly. (Item 10) The garnishment commenced in March 2014.

The SOR lists two student loans (SOR 1.f, \$12,418 and SOR 1.g, \$14,767). On Applicant's Electronic Questionnaires for Investigations Processing (e-QIP), he indicated he owed approximately \$39,000 on his student loans. (Item 4) His May 2014 credit report indicates he was paying \$158 monthly on a balance of \$25,646. (Item 7) The credit report listed his monthly payments as being "paid as agreed." (Item 7) Applicant supplied a spread sheet from a debt collector showing his student loan payments through February 2015. (SOR Answer) The spreadsheet had a cover letter from the debt management company and the spreadsheet listed how much of each payment represented the amount paid to the collection agency. (SOR Answer)

In 2010, Applicant obtained cell phone service for his daughter. (Item 10) He made timely payments on the account (SOR 1.e, \$3,074) until being unemployed in 2012. His May 2015 credit report indicated \$1,814 was owed on the account and the matter was "Settled in Full." (Item E) He owed \$875 on four medical collection accounts

(SOR 1.a, \$473; SOR 1.b, \$35; SOR 1.c, \$145; SOR 1.d, \$222). The accounts are now paid. (Items B, C, D)

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 must be considered 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 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 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 to obtain 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage their finances to meet their financial obligations.

Applicant owed student loans totaling approximately \$27,000, a \$3,000 telephone service collection account, and \$875 on four medical collection accounts. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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 difficulties were contributed to by his 2011 separation from the Air Force. There was a period of unemployment after leaving the Air Force. He has paid the telephone collection account, four medical collection accounts, and is repaying his student loans as agreed.

The mitigating condition listed in AG ¶ 20(c) applies. Applicant's financial obligations are being addressed and are under control. The mitigating condition listed in AG ¶ 20(d) applies because five of the SOR debts and the student loans have been or are being paid. His 2014 credit report indicates his student loan payments were being made as agreed. The spreadsheet shows he has been making payments on his student loans for a considerable amount of time, which indicates his payments will continue until the loans are satisfied.

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 the facts and circumstances surrounding this case. Applicant obtained telephone service for his daughter. The account went into collection, but has now been paid. He had four small medical bills, which are now paid. The amount owed on his student loans has been decreasing indicating payments are being made. His credit report indicates his loan payments are made as agreed.

Applicant has paid most of his delinquent accounts. The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1)) Overall, the record evidence leaves me without questions or doubts about Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his 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, Financial Considerations: 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. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge