



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



In the matter of:

ISCR Case No. 14-06226

Applicant for Security Clearance

Appearances

For Government: Jeff Nagel, Esq., Department Counsel

For Applicant: *Pro se*

August 19, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was delinquent on four debts, in the total amount of \$214,473. He resolved three of them. He failed to document any effort to resolve the remaining debt of more than \$12,471. Additionally, security concerns were raised because Applicant possessed a valid foreign passport issued by the United Kingdom. He has surrendered his foreign passport to his facility security officer. Applicant mitigated the foreign preference concerns, but failed to mitigate the financial concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 11, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On January 31, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines C (foreign influence) and F (financial considerations). The action was taken under Executive Order (EO) 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 effective September 1, 2006.

Applicant answered the SOR on March 11, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on June 16, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 19, 2015, scheduling the hearing for July 9, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I, and Exhibits (GE) 1 through 5. All were admitted without objection. Applicant testified on his own behalf and offered three exhibits marked Applicant Exhibits (AE) A through C, which were admitted without objection from Department Counsel. The record was left open to allow for the submission of additional materials until the close of business on August 7, 2015. On August 7, 2015, Applicant submitted two emails, containing 14 documents. Those documents were marked AE D through Q. Department Counsel had no objections to AE D through Q and they were admitted into evidence. The record then closed. DOHA received the transcript of the hearing (Tr.) on July 17, 2015.

Findings of Fact

Applicant is 56 years old. He was born in India and immigrated to the United Kingdom in 1972. He became a citizen of the United Kingdom in 1978. He immigrated to the United States in 1988 and became a U.S. citizen in 1996. Applicant is married to his second wife and has two adult children with her. He was laid off from his consulting position with a Government contractor in January 2015, pending the outcome of his security clearance adjudication. He is currently unemployed. (GE 1; AE A; Tr. 28, 37, 67-69, 73.)

Applicant was alleged to possess a current United Kingdom passport that is valid from approximately March 2010 to March 2020 in SOR subparagraph 1.a. He admitted this allegation in his Answer. Applicant is a dual citizen of the United Kingdom and the United States. He renounced his Indian citizenship when he acquired his U.K. citizenship. He renewed his U.K. passport in 2010 after acquiring U.S. citizenship to avoid the long lines at customs and immigration at the airport when visiting his parents, who reside in the United Kingdom. However, on April 28, 2015, he surrendered his U.K. passport to his facility security officer. The facility security officer will retain it "until the passport becomes invalid due to expiration, the termination of employment or the employee requests the passport be returned." The facility security officer will complete an incident report when the passport is returned to the employee. Applicant is unwilling to surrender his U.K. citizenship because he does not know where he wants to retire. (GE 1; AE A; Tr. 70.)

In addition to the concerns raised about Applicant's foreign passport, the Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR alleged that Applicant is delinquent on four debts, in the total amount of \$214,473. In his Answer,

Applicant admitted the debts alleged in SOR subparagraphs 2.a, 2.b, and 2.c. He denied the debt alleged in subparagraph 2.d. The alleged debts were listed on credit reports dated April 27, 2013; September 10, 2014; June 8, 2014; and July 8, 2015. (Answer; GE 2; GE 3; GE 4; GE 5.)

Applicant is delinquent on a home equity line of credit in the approximate amount of \$12,471, on a total loan of \$215,265, as alleged in SOR subparagraph 2.a. It has been delinquent since 2012. This debt is for a rental property Applicant owns, valued at \$750,000. He has \$488,000 in equity in this property. He testified that he has applied for a loan modification and claims that the loan underwriters will not accept payments on the loan while it is in the process of modification. He did not provide documentation to support these claims. Applicant has not paid on this loan in approximately three years. He intends to sell the home if the modification is not approved. This debt is unresolved. (Tr. 43-48.)

Applicant was indebted on a delinquent loan in the amount of \$181,365, as alleged in SOR subparagraph 2.b. This debt is for a home equity line of credit on Applicant's primary residence. As a result of a class action law suit regarding unfair lending practices, this debt was forgiven by the creditor as part of a settlement agreement with the Department of Justice. Applicant presented a letter from this creditor stating that he received "full forgiveness of the remaining principal balance of \$178,503.50" on this debt. It is resolved. (AE C; Tr. 30-31, 49-52.)

Applicant was indebted on a charged-off account in the amount of \$20,459, as alleged in SOR subparagraph 2.c. This debt had been delinquent since 2010. Applicant settled this debt on July 29, 2015, with a payment of \$4,200, as evidenced by a letter from this creditor. It is resolved. (GE 5; AE N; AE Q; Tr. 52-55.)

Applicant was indebted on a delinquent department store credit card in the approximate amount of \$178, as alleged in SOR subparagraph 2.d. This debt became delinquent when a payment was credited to the wrong account. Applicant paid this debt in full on July 14, 2015, as evidenced by a printout of an electronic payment. This debt is resolved. (AE M; Tr. 56-57.)

Applicant attributes his debts to periodic unemployment and underemployment from 2010 to the present. He was laid-off in October 2010. He found another job in February 2011, but took a 60% cut in pay. From March 2012 to the present, he has worked in various temporary consulting jobs to make ends meet. Applicant's wife, who handles their finances, testified that currently they "are barely surviving." Applicant has not participated in any type of financial counseling, although they have been diligently resolving their debts as best they can. Applicant and his wife discussed a number of unalleged debts that once were delinquent but have been resolved. Despite their financial difficulties, they fully finance their sons' educational costs and costs of living abroad, including a recent \$12,000 to \$13,000 payment for their housing for the next six months. (GE 1; Tr. 38-41, 53-54, 62, 72.)

Applicant's former supervisors, past colleagues, and friends wrote complimentary letters of support on Applicant's behalf, attesting to his dedication, quality of work, and ability to follow procedural guidelines. He presented a certificate of appreciation for engineering excellence that he received in August 1997. (AE E; AE F; AE G; AE H; AE I; AE J; AE K; AE L; AE P.)

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 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2(a) describing 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 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, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 EO 10865 provides that adverse 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

The security concern 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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant was delinquent on four alleged debts, in the total amount of \$214,473. Some of his debts were delinquent for over five years. He demonstrated both a history of not addressing debts, and an inability or unwillingness to do so over a substantial period. The evidence is sufficient to raise the above disqualifying conditions.

The following Financial Considerations mitigating conditions (MC) 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 met his burden to show he acted responsibly and resolved two of the four debts, identified in SOR subparagraphs 2.c and 2.d. The debt in subparagraph 2.b was resolved through a class action law suit, in which Applicant was a party. He failed to adequately address the debt, identified in SOR subparagraph 2.a. The record evidence reflects this debt is recent and ongoing. There is no indication that the circumstances under which they arose have changed. Applicant's wife testified that on their current income, they are "barely surviving." He therefore failed to fully establish substantial mitigation under MC 20(a).

Applicant offered insufficient evidence to support significant mitigation under MC 20(b). He attributed the delinquencies to his unemployment and underemployment. There are circumstances beyond his control. However, he failed to show he acted responsibly under the circumstances. Despite the delinquencies, he has prioritized paying for his sons' educational and living expenses abroad above his responsibilities to a remaining creditor. While he has shown himself to be a loving and responsible parent, he has not shown responsibility with respect to his delinquent home equity line of credit.

Applicant presented no evidence of financial counseling. He failed to provide documentation to support his claim that he is working with the bank on his home equity line of credit to repay that debt. He is still liable for the debt in subparagraph 2.a. These facts preclude full mitigation under MC 20(c) or 20(d).

The debt in subparagraph 2.b was resolved through a class action law suit, in which Applicant was a party. MC 20(e) applies to subparagraph 2.b.

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following is potentially applicable in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport.

Applicant is a dual citizen of the United States and the United Kingdom. He exercised his U.K. citizenship when he renewed the U.K. passport, despite that fact that he was a United States citizen at that time and had a U.S. passport. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 11. One is potentially applicable:

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant surrendered his U.K. passport to his facility security officer. It is no longer in his possession and he will not use it in travels. The Department of Defense will be notified if and when the passport is returned to Applicant. AG ¶ 11(e) provides mitigation with respect to this guideline.

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 all of the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is respected by those people who wrote letters on his behalf. However, Applicant has the burden to demonstrate sufficient mitigating information in this case and he has failed to meet that burden. Although he successfully mitigated the foreign preference concern by surrendering his U.K. passport to his facility security officer; overall, he has not demonstrated that he has acted responsibly with respect to his finances. He was unable to support his claim about the remaining delinquency with documentation. Applicant's inability to resolve his financial obligations raises concerns about his reliability, trustworthiness, and ability to follow rules and regulations necessary to protect classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, Applicant has not mitigated the Financial Considerations.

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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge