



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



In the matter of:

ISCR Case No. 10-04236

Applicant for Security Clearance

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

April 8, 2011

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 28-year-old employee of a defense contractor. He is alleged to be indebted to two creditors in the approximate amount of \$27,068. Applicant has mitigated the Financial Considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On November 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline 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 (AG) effective for cases after September 1, 2006.

Applicant answered the SOR on December 7, 2010, and requested a hearing before an administrative judge. The case was assigned to another Judge on February

24, 2011. DOHA issued a notice of hearing on February 24, 2011, scheduling the hearing for March 15, 2011. The case was reassigned to me on March 14, 2011, for hearing due to the unavailability of the original Judge assigned. The hearing was convened as scheduled. The Government offered Exhibit (GE) 1 through 6, which were admitted without objection. The Applicant offered Exhibit (AE) A through H, which were all admitted without objection. Applicant called one witness and testified on his own behalf. The record was left open for receipt of an additional document. On March 16, 2011, Applicant presented a five page post-hearing exhibit marked and admitted without objection as AE I. DOHA received the transcript of the hearing (Tr.) on March 24, 2011.

Findings of Fact

Applicant denies allegations 1.a. and 1.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 28-year-old employee of a defense contractor. He served in the Air Force from July 2000 to November 2003 and achieved the rank of Airman First Class (E-3). He has an associate's degree in criminal justice and is taking classes toward earning a bachelor's degree. He has been employed in his present position since November 2007. He is married and has five minor children. (GE 1; GE 3; Tr. 39-40, 43-44, 57-61.)

As stated in the SOR, Applicant is alleged to be indebted to two creditors in the approximate amount of \$27,068. His alleged debts are as follows:

Applicant was indebted on account #466602 in the approximate amount of \$75, as identified in a September 2010 report of credit. However, this debt has been paid. Applicant presented a letter dated December 1, 2010, bearing the same account number that verified this account was paid in full. Applicant testified that he was unaware of this debt prior to receiving the SOR, but he has now satisfied it. (GE 5; AE A; Tr. 44.)

Applicant's second delinquent account is past due in the approximate amount of \$26,993. This account was opened by Applicant's mother. She testified that she had the credit card for a number of years, before she added her son to the account for the purposes of building his credit. When she added Applicant, he signed an agreement, becoming jointly liable for the debt. Applicant's mother used the card to pay attorney's fees related to one of her other children. She indicated the debt was "solely mine." Applicant never used the card to make any purchases. Applicant's mother was current on the account until approximately April 2009, when her husband was unable to work due to illness and she was furloughed. She was then unable to make the required minimum payment to this creditor, unbeknownst to the Applicant. Statements went directly to Applicant's mother and Applicant did not see them. Despite his mother's inability to make the minimum payment, she still sent a payment in every month. In approximately June 2009, she contracted a credit consolidation company to help her manage this debt. Each month since June 2009, she testified she has paid the credit consolidation company at least \$300 toward the satisfaction of this debt. Applicant

presented a transaction history from the credit counselor showing payments of \$300 or more each month since June 2009. She has accumulated approximately \$2,718.65, held by the credit consolidation company, for the eventual satisfaction of this debt. Applicant was not aware of the debt until it was brought to his attention by the government. He is now following up on the debt with his mother and making sure she is able to maintain her monthly payments to the credit consolidation agency. Once Applicant's mother has accumulated a significant balance, the credit consolidation company will settle the account on her behalf. He has also indicated he is willing to contribute towards the debt's repayment. (GE 2; GE 4; GE 5; GE 6; AE B; AE C; AE D; AE I; Tr. 27-30, 34-38, 45-46, 51-52.)

Applicant is well respected by his operations manager, coworker, and neighbor, who wrote letters of support on his behalf. His Operations Manager indicated Applicant "has demonstrated an uncommon level of professionalism, personal integrity and sense of service to community that most people only hope to achieve." His neighbor indicates that Applicant is a "positive male role model" in their underprivileged community. Evidence establishes that Applicant has volunteered numerous hours with the Tuskegee Airmen and has been instrumental in setting world aviation records. Additionally, he works as a tutor to disadvantaged children and volunteers his time visiting disabled veterans in the local veteran's hospital paraplegic ward. (AE E; AE F; AE G; AE H; Tr. 31-33, 47-50, 53-57.)

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 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 the 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 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.

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 *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 for Financial Considerations is set out in AG ¶ 18, as follows:

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 concern under AG ¶ 19. The following is potentially applicable in this case:

(a) inability or unwillingness to satisfy debts.

Applicant had two delinquent accounts listed on his credit reports. The debts entered collections and were not satisfied at the time the SOR was issued. The evidence is sufficient to raise the above disqualifying condition.

Three 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant paid off one of the two debts alleged. Thus, he has initiated a good-faith effort to repay the debt listed in allegation 1.a. AG ¶ 20(d) applies, in part.

With respect to the outstanding delinquency alleged in 1.b., Applicant's financial obligation is directly attributable to his mother. She used her credit card, on which Applicant was also a co-signer, to pay legal fees for one of her other children. Shortly thereafter, her husband was unable to work due to illness and she was furloughed, causing her inability to pay the monthly minimum due on the account. These problems are both beyond Applicant's control and are unique circumstances that are unlikely to recur. Further, Applicant was not aware that his mother had become delinquent on the debt until it was brought to his attention by the Government. Since that time, he has monitored his mother's payments to the credit counseling agency. She has been making payments to the credit counseling agency since June 2009 toward the satisfaction of this debt. Under the circumstances, the debt casts no doubt on the Applicant's current reliability, trustworthiness, or good judgment. Further, Applicant is acting responsibly by monitoring his mother's repayment efforts since learning of the delinquency. AG ¶¶ 20(a) and 20(b) are mitigating.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

The majority of Applicant's debt was caused by unforeseen circumstances beyond his control. He was young when his mother added him to her credit card in order to help him establish credit. Her efforts backfired and actually ended up tarnishing Applicant's credit. Now that he is older, he is aware of the importance of maintaining a close watch on his credit accounts and can be trusted to monitor his mother's repayment of their outstanding joint debt. Applicant is well respected by his operations manager, coworker, and neighbor. He served the U.S. honorably for three years in the Air Force. Those who know him best report that he has good judgment and integrity. His standards are reflected in the time and devotion that he has invested in his community through his volunteer work. His integrity, as attested to in his letters of support, shows that his promises to continue to monitor his mother's repayment of the debt are credible. Further, he is willing to help his mother repay the debt.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concern.

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
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Subparagraph 1.a.:	For Applicant
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Subparagraph 1.b:	For Applicant
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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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge