



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



In the matter of:)	
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)	ISCR Case No. 11-06644
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

March 4, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On August 2, 2012, in accordance with Department of Defense (DoD) Directive 5220.6, the DoD issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. (Item 1.) The action was taken under 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 Department of Defense after September 1, 2006.

On September 11, 2012, Applicant replied to the SOR (RSOR) in writing, and he requested that his case be decided on the written record in lieu of a hearing. (Item 4.) On November 6, 2012, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered 10 documentary exhibits. (Items 1-10.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on January 9, 2013. Applicant submitted additional evidence, which has been identified and entered into evidence without

objection as Items A through F. The case was assigned to this Administrative Judge on February 1, 2013.

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

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 28 years old. He is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists five allegations (1.a. through 1.e.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. The debts will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for a student loan in the amount of \$692. Applicant denied this SOR allegation in his RSOR. (Item 4.) This debt has been established to be due and owing in Items 6, 9, and 10.

In Applicant's post hearing documents, he avers that he is current on this debt. (Item A.) Item F, a letter from this creditor, establishes that Applicant's is paying approximately \$180 a month toward this debt of \$26,785, and the amount past due is \$0. I find that this debt is being resolved as per the agreement, and it is not overdue.

1.b. This overdue debt is cited in the SOR for a past due account in the amount of \$897, charged off with an approximate balance of \$993. Applicant denied this SOR allegation in his RSOR. (Item 4.) This debt has been established to be due and owing in Items 5 through 10.

In Item A, Applicant avers that this debt has been paid in full. Item F, a letter from this creditor, establishes that Applicant has paid the disputed amount of \$929.69 that had been charged off, and the account was paid in full in September 2012. I find that this debt has been resolved.

1.c. This overdue debt is cited in the SOR for a student loan in the amount of \$150. Applicant denied this SOR allegation in his RSOR. (Item 4.) This debt has been established to be due and owing in Items 6, 7, 9, and 10. I find that this debt is to the same creditor as 1.a., above, and as stated above, this debt is being resolved as per the agreement, and it is not overdue.

1.d. This overdue debt is cited in the SOR for a charged off auto loan account in the amount of \$6,000, with a balance of \$6,530. Applicant admitted this SOR allegation in his RSOR. (Item 4.) This debt has been established to be due and owing in Items 5 through 10.

In Item A, Applicant avers that this debt has been paid in full. Item B, a letter from this creditor, establishes that Applicant has paid \$196.55 a month toward this debt of \$26,785, since November 2007, with larger payments made in 2011 through January 2013, and this debt has been paid in full. I find that this debt has been resolved as per the agreement with the creditor.

1.e. This overdue debt is cited in the SOR for a past due account in the amount of \$787, charged off with an approximate balance of \$3,436. Applicant denied this SOR allegation in his RSOR. (Item 4.) This debt has been established to be due and owing in Items 7 through 10.

In Item A, Applicant avers that this debt has been paid in full. Item E consists of a receipt from the creditor of this debt, showing that Applicant made payment of \$1,500 on January 7, 2013, toward this debt, and it did not show that any additional amount was due. I find that this debt has been resolved as per the agreement with the creditor.

Applicant also averred that the debt listed as 1.a., above, was incurred by his mother for student loans, and he co-signed the loan for his mother when he was still a teenager. (Item A.) He has assisted his mother for years in paying off this loan, which as reviewed above, is now current.

Applicant explained that the debt listed as 1.d., above, was incurred by his ex-fiancee, and that while he co-signed the loan, it was their agreement that she would make the payments toward the loan. Unbeknownst to him, after they separated, she stopped making payments and filed for bankruptcy. (Item A.) As reviewed above, he has now resolved this debt.

Finally, Applicant wrote that he has been receiving financial counseling to help him resolve his overdue debts. (Item A.) Item D establishes that Applicant has been receiving financial counseling from a law firm and making monthly payments, initially of \$89.95 and currently in the amount of \$24.95 to help him with his debts.

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 useful 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 over-arching 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. 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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to 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 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 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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns and could potentially apply in this case. Under AG ¶ 19(a), “an inability or unwillingness to satisfy debts,” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. Under AG ¶ 20(b), it may be mitigating where, “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.” Since a significant amount of Applicant’s overdue debt was the result of his co-signing for loans for his mother and fiancée, and since these individuals failed to meet their financial obligations, this mitigation condition is potentially applicable. Applicant has now resolved all of his overdue debts, with the exception of the student loans for his mother, which are now current. Therefore, I find that Applicant has acted responsibly, and this mitigating condition is applicable in this case.

Additionally, since Applicant has sought financial counseling, AG ¶ 20(c) applies to this case. Finally, I find that AG ¶ 20(d) is applicable, since Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Because of these significant mitigating conditions, I find Guideline F for Applicant.

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.

