



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



In the matter of:)	
)	
)	ISCR Case No. 11-13181
)	
Applicant for Security Clearance)	

Appearances

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

07/05/2013

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

On February 12, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E and F. This 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) implemented on September 1, 2006.

On February 21, 2013, Applicant answered the SOR and requested a hearing. The case was originally assigned to another administrative judge and was reassigned to me on May 9, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 9, 2013, and the hearing was convened as scheduled on May

16, 2013. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 6, which were admitted into evidence without objection. Applicant testified, called three witnesses to testify on his behalf, and offered Applicant's Exhibits (AE) A through J that were admitted into evidence without objection. The record was left open until June 13, 2013, to provide Applicant an opportunity to submit additional matters. He timely submitted additional documents that were marked as AE K through S and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 7, 2013.

Procedural Matters

At the hearing, Applicant affirmatively waived the 15-day notice requirement in Paragraph E3.1.8 of the Directive.¹

Findings of Fact

Applicant is a 31-year-old electronics technician who works for a defense contractor. He has been working for his current employer since April 2009. He graduated from high school in 2000. He served on active duty in the U.S. Marine Corps from October 2000 to October 2004, attained the grade of lance corporal (E-3), and received a general discharge under honorable conditions. He is married and has three children, ages 7, 8, and 13, and two stepchildren, ages 11 and 12. Since about 2001, he has held a security clearance without any reported security violations.²

The SOR listed four allegations under Guideline E. Those asserted that Applicant quit a job in November 2010 to avoid being fired for violating company policy by taking a tip from a customer (SOR ¶ 1.a); that he quit a job in May 2007 to avoid being fired for falling asleep while working as a security guard (SOR ¶ 1.b); that he was given a general discharge under honorable conditions from the Marine Corps in 2004 for disobeying a direct order (SOR ¶ 1.c); and that he failed to appear in a state court in September 2011 following an earlier arrest for speeding (SOR ¶ 1.d). Under Guideline F, the SOR alleged that he had 17 delinquent debts totaling \$15,637. In his Answer to the SOR, Applicant admitted all of the SOR allegations. His admissions are incorporated as findings of fact.³

Personal Conduct

In his last assignment in the Marine Corps, Applicant resided with his wife. He and his wife had an argument that resulted in him being ordered to leave the home and to reside in the barracks. During that argument, his wife slapped him and he pushed her to the ground. At that time, she was pregnant. He was ordered to not have any contact

¹ Tr. at 12-13.

² Tr. at 5-7, 96; GE1, 3.

³ Applicant's Answer to the SOR; GE 2-6.

with his wife unless he was supervised. At a later point, his wife became ill and was admitted to a naval hospital. She was moved to the psychiatric ward and placed on a 72-hour hold due to a concern that she might hurt herself. While in the hospital, she became upset, called Applicant, and asked him to come visit her. He went to see her without an escort. No argument or physical confrontation occurred while Applicant was visiting his wife. He was caught visiting her without an escort. He received non-judicial punishment for violating the military restraining order and was later administratively separated from the Marine Corps for that offense. He was unemployed for about four months after his discharge from the Marine Corps.⁴

In May 2007, Applicant quit a security guard position before being fired because he fell asleep while on duty. He indicated this incident occurred because he had been working the night shift for about six months without getting enough sleep. He was unemployed for about a month after quitting that job.⁵

In November 2010, Applicant worked at an automobile parts store. During that month, a lady had problems with her vehicle outside the store. One of the belts on her vehicle's engine needed replacement. The lady did not have anyone who could assist her in replacing the belt. Around the time the store was closing, she had been in the parking lot of the store for a long time. Applicant asked her if she could find anyone to assist her. Since she was unable to find assistance, he replaced the belt for her. He told her a bracket placing tension on the belt was broken, that the fix was only temporary, and that she needed to take her vehicle to a shop for a permanent repair. She gave him about \$15 as a tip. He initially told her that he could not accept it. She insisted and shoved the money in his pocket. When she later took the vehicle to a repair shop, she indicated that Applicant broke the bracket. The repair shop informed the manager of the automobile parts store about what the lady had said. Applicant was told that it was a violation of store policy to accept the tip. He offered to give the tip to the store, but the manager refused. Applicant quit that job to avoid being fired for accepting the tip.⁶

On July 2, 2011, Applicant was arrested in another state for speeding and reckless driving. The speeding citation indicated that he was traveling at 110 miles per hour (MPH) in a 70 MPH zone. In September 2011, he pleaded guilty to speeding at 78 MPH in a 70 MPH zone and reckless driving. He was fined \$1,200 for the speeding offense and \$550 for the reckless driving offense. He testified that, due to the speed at which he was traveling, he was considered a "super speeder" and was placed on probation for 12 months. In August 2012, the court issued a warrant for his arrest. Applicant testified that the warrant was issued because he missed a \$217 court payment. He made the payment and the warrant was dismissed in September 2012. He successfully completed his probation later that month.⁷

⁴ Tr. at 63-67, 74, 96-98; GE 1, 3.

⁵ Tr. at 72-74; GE 1, 3.

⁶ Tr. at 69-73; GE 1, 3.

⁷ Tr. at 74-76; GE 3; AE A.

Financial Considerations

Applicant's wife testified that she has five children. One of her sons lives with his father in another town. Another of her sons had a heart condition that resulted in him having open heart surgery. He was also asthmatic. Her son with the medical conditions had been living with her sister. Her sister, however, developed breast cancer in about 2000. Applicant's wife did not know of her sister's breast cancer until about 2010 when she was placed on chemotherapy. In 2010, Applicant's wife left her job to take care of her sister. Applicant took on the financial responsibility of supporting his sister-in-law. She passed away in June 2012. At the time of the hearing, Applicant's wife still was not employed because she needs to care for her son.⁸

SOR ¶¶ 2.a, 2.b, 2.c, and 2.d – collection accounts for \$278, \$448, \$267, and \$257, respectively. These are medical accounts that were placed for collection between October 2006 and March 2011. Applicant stated that he did not have medical insurance while he was working as a security guard in 2007-2008. Since 2009, he has had medical insurance while working in his current job. One collection agency is handling all four of these accounts. He provided documentation showing that he made a payment to that collection agency in the amount of \$779 on June 13, 2013, and indicated those debts were paid in full.⁹

SOR ¶ 2.e – collection account for \$727. This was a cable television account that was placed for collection in May 2012. He indicated that he has been trying to resolve this debt for years. He stated that he has asked the creditor for an explanation of the basis for this debt and no one could provide him an answer. He further stated that he was disputing this debt, but also indicated he was making payments toward it. He did not provide proof of those payments or any documentation supporting the dispute.¹⁰

SOR ¶¶ 2.f and 2.g – collection accounts for \$370 and 229, respectively. These are medical accounts that were placed for collection in June 2012 and July 2010. Applicant testified that he intended to take care of his outstanding medical debts when he deployed and was earning additional money. By the time the record closed, no proof had been provided to show that these accounts had been resolved.¹¹

SOR ¶ 2.h – collection account for \$45. This was a medical account that was placed for collection in January 2010. Applicant provided proof that he paid this account in May 2013.¹²

⁸ Tr. at 18-20, 55-63, 99-100.

⁹ Tr. at 78-80; GE 3, 4, 5, 6; AE H, M.

¹⁰ Tr. at 81-82, 91; GE 4, 5.

¹¹ Tr. at 81-82, 93-95; GE 3, 4, 5.

¹² Tr. at 81-82, 91-92; GE 3, 4, 5, 6; AE G.

SOR ¶ 2.i – charged-off account for \$2,359. This account was charged off in September 2009. Applicant entered into an agreement to settle this account for \$1,330 in March 2013. He provided proof that he paid this account in April 2013.¹³

SOR ¶ 2.j – collection account for \$5,463. This was an automobile loan that was placed for collection in May 2006. Applicant was laid off from a job in October 2005 and did not have enough money to make his car payments. He made arrangements to have the car voluntarily repossessed. When he called the creditor to attempt to settle this account, the creditor had no record of him. Since then, the creditor has not returned his telephone calls. This debt no longer appears on his two most recent credit reports.¹⁴

SOR ¶ 2.k – past-due account for \$1,262. This was a military credit card account that was a 120 days or more past due. He provided proof that this account was paid in February 2008.¹⁵

SOR ¶ 2.l – past-due account for \$2,083. This was a student loan account that was 120 days or more past due. He stated that he made an arrangement to pay \$100 per month toward this loan. The payments are to be deducted automatically from his checking account. He provided documentation showing that he has made two \$100 payments on this debt in May 2013. His two most recent credit reports do not reflect this debt.¹⁶

SOR ¶ 2.m – collection account for \$820. This was an installment loan that was placed for collection in February 2010. Applicant obtained this loan to repair his vehicle's transmission. He provided proof that this account was paid in June 2013.¹⁷

SOR ¶ 2.n – collection account for \$135. This was a vehicle insurance account that was placed for collection in November 2010. Applicant provided documentation showing this debt was settled and paid for \$108 in May 2013.¹⁸

SOR ¶ 2.o – collection account for \$70. This was a medical debt that is not reflected on his credit reports. He provided documentation showing that he paid a medical debt of \$70 in June 2013.¹⁹

¹³ Tr. at 90-91, 103-105; GE 3, 4, 6; AE E, H, L.

¹⁴ Tr. at 53, 57-58, 89-90; GE 3, 4, 5, 6.

¹⁵ Tr. at 88-89; GE 3, 6; AE C.

¹⁶ Tr. at 82-86; GE 3, 6; AE M.

¹⁷ Tr. at 80-81; GE 3, 6; AE R.

¹⁸ Tr. at 86-87 92-93; GE 4, 6; AE B, G.

¹⁹ Tr. at 87; GE 6; AE P.

SOR ¶ 2.p – collection account for \$353. This was a payday loan that was placed for collection in June 2009. He provided proof that he paid this account in June 2013.²⁰

SOR ¶ 2.q – collection account for \$541. This was a fitness club membership account that was placed for collection in June 2011. Applicant testified that he made a payment arrangement for this debt in which he would pay \$40 per month. The payments will be automatically deducted from his checking account on the 17th of each month. At the time of the hearing, he provided documentation showing that he has made one payment toward this account.²¹

Applicant testified openly and honestly. I found him to be a credible witness. He stated that no one ever taught him as he was growing up about credit, saving money, or financial responsibility. In 2012, he received credit counseling from a local family services organization. In January 2013, he presented a Personal Financial Statement that reflected his net monthly income was \$2,188, his total monthly expenses were \$1,811, and his total monthly debt payments were \$325, which left him a net monthly remainder of \$52. He testified that he originally owed the Federal Government about \$9,000 in back taxes for 2009. He had a \$6,000 income tax refund withheld in 2012 and has agreed to pay the remainder of his back taxes. His credit reports reflected that he has had a number of other loans that were paid and on which he was never late.²²

Applicant's supervisor has known Applicant for about five years. He testified that Applicant is trustworthy and an essential part of his team. As part of his responsibilities, Applicant travels to the Middle East to build communications facilities for the military. He is a valued employee. He is punctual and is always the last to leave when something needs to get done. His supervisor indicated that Applicant was scheduled to deploy later in that week to the Middle East for three months. While deployed, Applicant's pay would increase because he is able to work overtime. His supervisor indicated that he had "absolute confidence" in Applicant's loyalty and stated that he can be trusted.²³

Applicant's father testified that his family had a long history of military service. He testified that he was a retired Green Beret. His grandfather, father, uncles, nephews, and cousins also served in the military. He stated that he never had any problems with the Applicant as he was growing up.²⁴

²⁰ Tr. at 87-88; GE 3, 6; AE O.

²¹ Tr. at 32-33, 76-78, 88; GE 3, 6; AE D, F, I.

²² Tr. at 17-18, 98-103; GE 2, 3; AE S.

²³ Tr. at 35-44; AE J.

²⁴ Tr. at 44-55.

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 that 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 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 about 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available evidence information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior . . . [and] (3) a pattern of dishonesty or rule violations

In 2004, Applicant was administratively separated from the Marine Corps for violating a military restraining order. In 2007 and 2010, he quit jobs before being fired for misconduct. In 2011, he was arrested for speeding and later an arrest warrant was issued against him for failure to make a fine payment. The above disqualifying conditions apply.

AG ¶ 17 lists three personal conduct mitigating conditions that are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

At the hearing, Applicant was open and honest about his misconduct. He disclosed his misconduct in his security clearance application and during his background investigation. He acknowledged that he has made mistakes and is remorseful. Applicant's misconduct, while not trivial, is not egregious and does not raise questions about his integrity. He understands that he must avoid conduct that reflects negatively on his reliability and good judgment. His inappropriate behavior is unlikely to recur. AG ¶¶ 17(c), 17(d), and 17(e) apply.

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 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 accumulated delinquent debts that he was unable or unwilling to satisfy for a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Several 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.

When Applicant learned that his sister-in-law had breast cancer, he took on the responsibility of supporting her. At that time, his wife also stopped working to care of her sister. Caring for his sister-in-law had a negative impact on Applicant's financial status. His sister-in-law passed away in 2012. Since then, Applicant has taken significant steps to address his financial delinquencies. He provided documentation showing that he paid 11 of the delinquent debts (SOR ¶¶ 2.a, 2.b, 2.c, 2.d, 2.h, 2.i, 2.k, 2.m, 2.n, 2.o, and 2.p). He has made payment arrangements for his student loan (SOR ¶ 2.l) and another debt (SOR ¶ 2.q). He attempted to resolve the debt in SOR ¶ 2.j, but was told the creditor no longer had a record of that debt and his most recent credit reports no longer reflected that debt. The three remaining debts are relatively small and Applicant stated that he either intends to either pay or dispute them. He has received financial counseling and is currently living within his means. There are clear indications that his financial problems are being resolved and are under control. His financial problems are unlikely to recur. AG ¶ 20(c) applies. AG ¶¶ 20(a), 20(b), 20(d), and 20(e) partially apply.

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

Applicant served in the Marine Corps. He is a valued employee in his current job. His supervisor stated that he has "absolute confidence" in Applicant's loyalty and indicated that he can be trusted. Applicant has taken significant steps to resolve his financial problems and understands that he must avoid engaging in conduct that raises questions about his reliability and good judgment. He is unlikely to engage in questionable conduct in the future. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns under the personal conduct and financial considerations guidelines.

Formal Findings

Formal findings 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 E:	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a – 2.q:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge