



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



In the matter of:)
)
) ISCR Case No. 14-04491
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

12/14/2016

Remand Decision

HEINY, Claude R., Administrative Judge:

On February 11, 2016, a determination was made denying Applicant a security clearance to work in the defense industry. Applicant had two vehicles repossessed and nine delinquent accounts totaling more than \$32,000. Initially, he provided documentation he had paid one delinquent obligation of approximately \$500. Applicant appealed the denial and the case was remanded to consider documents submitted by Applicant. Applicant has adequately addressed the financial considerations and personal conduct security concerns. Clearance is granted.

History of the Case

On March 26, 2015, acting under the relevant Executive Order and Department of Defense (DoD) Directive,¹ the DoD issued a Statement of Reasons (SOR) detailing

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.

personal conduct and financial considerations security concerns. DoD adjudicators could not find that it was clearly consistent with the national interest to grant or continue Applicant's security clearance. On April 8, 2015, Applicant answered the SOR and requested a hearing. On May 27, 2015, I was assigned the case. On June 16, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing to be convened on July 7, 2015.

At the hearing, Government's Exhibits (Ex.) 1 through 5 and Applicant's Exhibit A were admitted without objection. Applicant testified at the hearing. The record was kept open to allow Applicant to present additional documents. Post-hearing documents were received and admitted without objection as Ex. B-E.² On July 15, 2015, DOHA received the hearing transcript (Tr.).

On February 11, 2016, a decision was made to deny Applicant's clearance because of unmitigated financial considerations security concerns. Applicant appealed that determination stating he had submitted additional post-hearing documents not referenced in the decision. On April 15, 2016, the DOHA Appeal Board directed that the documents forwarded by Applicant with his appeal be considered and that a new decision be issued after having considered the documents. On remand, neither the Applicant's appeal brief nor the documents he had apparently included with his brief were presented to me. I issued an Order to Produce Documents.(Hearing Exhibit I) Both parties were requested to submit all documents they wished considered, including any previously submitted documents.

On May 4, 2016, Applicant submitted eight documents, but failed to resubmit, as directed, his original documents. Department Counsel had no objection to the new submissions and submitted no additional documents on behalf of the Government. Applicant's original documents as admitted are Exhibits (Ex.) A through E and Applicants eight new submissions have been marked and admitted as Ex. F – M.

Findings of Fact

The Findings of Facts found in the February 11, 2016 decision³ are incorporated into this decision as supplemented by the new post-hearing documents submitted by Applicant. After a thorough review of the pleadings, exhibits, testimony, and Applicant's new submissions, I make the following findings of fact:

Those original findings will be briefly summarized. Applicant is a 49-year-old part-time aircraft servicer who has worked for a defense contractor since November 2010, and he seeks to obtain a security clearance. Since January 2002, he has worked 20 to 28 hours a week as an aircraft servicer fueling aircraft. (Ex. 3, Tr. 21, 39) Since 1996, Applicant has worked a full-time civil service position, WG 9 – Step 5, as an aircraft inspector. (Ex. 3, Tr. 38) From April 1987 through June 1991, he honorably served in

² On January 15, 2016, Applicant's post-hearing submissions were forwarded by Department Counsel

³ Those original findings will be briefly summarized in this decision.

the U.S. Marine Corps, separating as a corporal (E-4). (Ex. 1, Tr. 27) The U.S. Department of Veterans Affairs (VA) rates Applicant's disability at 40 percent. (Tr. 22) His disability pay is \$587 monthly. (Tr. 22) In 2005, Applicant filed for Chapter 7 bankruptcy protection (SOR 1.a) asserting eight of the nine delinquent obligations were due to actions of his ex-wife, from whom he was divorced in September 2010. In September 2005, his debts were discharged.

In September 2005, Applicant purchased a vehicle. The vehicle was repossessed and sold when he failed to make the required monthly payments. Following the sale of the vehicle, \$12,968 remained owing on the loan (SOR 1.b). (Ex. 2) The creditor agreed to settle the debt for \$4,000, which Applicant has paid. (Ex. F) In September 2006, he purchased a van for his now ex-wife's use. His ex-wife was awarded their marital home and van in the divorce and was supposed to make payments on these items. However, she defaulted on both the home and car loan resulting in the foreclosure⁴ of the home and repossession of the van. (Ex. 4, Tr. 25, 29) He never received any correspondence prior to or following the van's repossession. (Tr. 30) Following the repossession and sale, a \$7,667 debt (SOR 1.e) remained. (Ex. 2) The creditor cancelled the debt and issued an Internal Revenue Service Form 1099-C. (Ex. H)

In 2007, Applicant signed an apartment lease for his ex-wife and her children. (Tr. 28) The debt (SOR 1.c, \$3,182) was in default and went to collection in 2008. The creditor has acknowledged that Applicant has paid this account in full. (Ex. G)

At the hearing, Applicant provided a document showing that in August 2015 he paid an undisclosed amount on a debt not listed in the SOR. His payment on a bank and trust account resulted in a zero balance owed on that obligation. (Ex. D) Available creditor correspondence (Ex. I) shows that the payment was to resolve the delinquent credit card debt listed in SOR 1.f, even though Applicant never indicated that the bank payment was to satisfy that debt. Applicant settled the debt for half of its balance. (Ex. I)

Applicant paid \$785.82 on his \$1,965 delinquent telephone account (SOR 1.g), which met his financial obligation to the collection agency. (Ex. J) He also settled a second delinquent telephone debt (SOR 1.i, \$1,008) by paying \$352.93. (Ex. K) The matter is settled, and the creditor has agreed not to pursue further collection actions. Applicant paid the entire amount due on his energy bill (SOR 1.j). (Ex. L)

Applicant asserts the debts listed in SOR 1.d (\$1,261) and SOR 1.h (\$1,261) are the same delinquent obligation. Additionally, he asserts that the collection agency listed in SOR 1.d that was attempting to collect the debt is no longer in business. He has sent numerous letters attempting to locate and verify the debt, including to the energy company identified in SOR 1.h. The record contains no evidence of any response to his inquiry. (Ex. B-1, B-2, M-1, M-2, M-3)

⁴ The home went to foreclosure. (Tr. 24) Applicant's June 2015 credit report indicates the credit granter on the house had reclaimed the collateral to settle the defaulted mortgage. (Ex. A) The balance on the account was zero. (Ex. A)

In Applicant's May 2013 Electronic Questionnaires for Investigations Processing (e-QIP), he answered "no" when asked about delinquencies involving routine accounts in Section 26. The question asked about repossessions, of which he had two; collection accounts, of which there were eight; charged-off accounts, of which there was one; and whether he was currently or had been more than 120 days delinquent on any account. (Ex. 1) He stated he was unfamiliar with working with computers and was pressed to return the form. He was assisted by a co-worker in completing the form. (Tr. 35) He stated he did not have account numbers or balances on the debts at the time he was completing the form. (Tr. 35) In his SOR response, he indicated he completed the e-QIP at work and did not have any pertinent account information with him. He also asserted he was not given time to research the information. Later in the same month, when questioned about his delinquent accounts, he stated he was unfamiliar with the majority of the debts on his credit report.

In May 2013, Applicant completed a personal subject interview (PSI) during which his delinquent obligations were discussed. (Ex. 3) He acknowledged two delinquent accounts. (Ex. A) He stated he did not list his other delinquent accounts because he had no knowledge of them and had never received any collection letters concerning them. (Ex.2) He asserts he never intentionally provided false information.

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 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 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 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of 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

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

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 creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed-upon terms. Absent evidence of strong 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 his finances to meet his financial obligations.

Applicant owed more than \$32,000 following two vehicle repossessions and the default on nine charged-off or 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 has been full-time employed since 1996, has had a part-time job since 2002 and also receives approximately \$600 monthly in VA disability compensation. He has had two vehicles repossessed and incurred additional delinquent accounts. All of his delinquent account have been settled and paid or the creditor cancelled the debt. No creditors are pursuing further action seeking payment on his delinquent accounts. Applicant's financial problems were due in part to his divorce and actions of his ex-wife. These are events beyond his control. The mitigating condition listed in AG ¶ 20(b) applies.

In June 2014, Applicant received credit or financial counseling and agreed to start making payments on his debts. All of his delinquent debts have now been addressed. The mitigating condition listed in AG ¶ 20(c) applies. The mitigating condition listed in AG ¶ 20(d) applies to his delinquent obligations because of his good-faith effort to repay his delinquent obligations.

Applicant has provided sufficient evidence indicating he has addressed all of his delinquent obligations except for the same obligation that is alleged in SOR 1.d and 1.h. He has sent numerous letters to the creditors attempting to locate and verify this debt, which have gone unanswered. There is little more he can do to address this debt. There are two delinquent obligations, given they pertain to the same debt and it has not been verified AG ¶ 20(e) applies to SOR 1.d and 1.h.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

With respect to the alleged personal conduct concerns involving failing to list his financial problems on his e-QIP, the pertinent disqualifying condition is AG ¶ 16(a), which is established if there is a deliberate omission, concealment, or falsification of relevant factors from any personal security questionnaire. Applicant answered “no” when questioned about financial delinquencies when completing his e-QIP. He said he was unaware of some of the debts and did not know account balances or numbers when completing the form. He was in a rush to complete his e-QIP.

The Government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision. The Government relies on applicants to truthfully disclose adverse information in a timely fashion, not when it is perceived to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the Government relies on to perform damage assessments and limit the compromise of classified information.

The Government has shown Applicant's answers on his e-QIP were incorrect, but this does not prove Applicant deliberately failed to disclose information about his finances. He was unaware of the majority of the SOR delinquent obligations when he completed his e-QIP. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government, when applying for a security clearance, is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully.

When Applicant completed his e-QIP, he was aware he had some debt; however, he was unaware of the account numbers or the balances on those debts. It was not until

he was questioned about his finances that he learned the extent of his delinquent accounts. Having observed Applicant's demeanor and listened to his testimony, I accept his denial of intentional falsification and find that his answers were not deliberate omissions, concealments, or falsifications.

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 honorably served in the U.S. Marine Corps. At the time the initial decision was made all the documents sent by Applicant had not been received and made a part of the record. After reviewing the documents submitted in his Response to the Order to Produce Documents, he has provided sufficient evidence indicating he has addressed all of his delinquent obligations, except, as previously noted, the same obligation that appears in SOR 1.d and 1.h. Numerous letters by him to the creditors attempting to locate and verify this debt have gone unanswered. There is little more he can do to address this debt.

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 and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the personal conduct and financial considerations security concerns.

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.j: For Applicant

Paragraph 2, Personal Conduct: FOR APPLICANT

Subparagraph 2.a: 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