



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



In the matter of:)	
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)	ISCR Case No. 14-06224
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esquire, Department Counsel
For Applicant: Ryan C. Nerney, Esquire

August 15, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On January 28, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E for Applicant. The action was taken under Executive Order 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) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On February 14, 2015, Applicant replied to the SOR (RSOR) in writing with attachments, and he requested a hearing in this case before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 9, 2015, and the hearing was convened, as scheduled, on January 27, 2016. The Government offered Exhibits 1 through 6, which were admitted without objection. Applicant testified on his own behalf and submitted Exhibits A and B, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on February 4, 2016. The record was kept open until February 5, 2016, to allow Applicant

to submit additional evidence. The documents that were timely received have been identified and entered into evidence without objection as Exhibits C through P. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

After a complete and thorough review of the evidence in the record discussed above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 50 years old. He is married, and he has one adult daughter. He is a high school graduate, employed as an Aircraft Electrician by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists six allegations, 1.a. through 1.f., regarding financial difficulties, specifically delinquent debts of Applicant. The allegations will be discussed in the same order as they were listed on the SOR.

1.a. The SOR alleges that Applicant has an overdue debt for a judgment that was entered against him in 2008 in the approximate amount of \$11,604. Applicant admitted this allegation in his RSOR.

At the hearing, Applicant testified that this debt resulted when his daughter was involved in an accident in a vehicle that he had purchased for her and she did not have insurance. He had given her the responsibility to obtain insurance, but she failed to do so. Applicant averred that his daughter has been making payment of \$50 a month for many years, although the Applicant did not know how long. He estimated that they owed approximately \$3,500 at this time. The first page of Exhibit A shows that Applicant owed \$4,250 as of January 30, 2015, but since Applicant testified that they have continued making the monthly payment of \$50 the total should be less. (Tr at 21-28.) I find that Applicant is resolving this debt in a reasonable fashion.

1.b. The SOR alleges that Applicant has an overdue medical debt for a collection account in the approximate amount of \$125. Applicant denied this allegation in his RSOR. At the hearing, Applicant testified that he disputed this debt because he was not sure of its origin. He attempted to contact the creditor to dispute the debt, but despite his best effort, including going to the office address listed on the debt, and disputing the debt through Equifax, he could not locate the creditor. Applicant testified that the dispute was accepted and the debt was removed from his credit report. (Tr at 28-31.) I find that Applicant has made a good-faith effort to resolve this debt.

1.c. The SOR alleges that Applicant has an overdue medical debt for a collection account in the approximate amount of \$81. Applicant admitted this allegation in his

RSOR. At the hearing, Applicant testified that he has paid off this debt. (Tr at 31-33.) Exhibits A and E show that this debt has been paid. I find that this debt has been resolved.

1.d. The SOR alleges that Applicant has an overdue medical debt for a collection account in the approximate amount of \$259. Applicant admitted this allegation in his RSOR. At the hearing, he testified that after forgetting about this bill for a period of time, this bill has now been paid. (Tr at 33-36.) Exhibit D is a letter from the creditor showing that this debt was paid in full on January 25, 2016. I find that this debt has been resolved.

1.e. The SOR alleges that Applicant has an overdue debt for a collection account in the approximate amount of \$6,047. Applicant denied this allegation in his RSOR. At the hearing, he testified that he disputed this debt as he did not recall it and the social security number listed on the debt was not his, nor that of any family member. He stated that he contacted the collection agency for this debt, and explained the situation to them and was told the debt would be removed from his credit report. (Tr at 36-40.) Exhibit B, a letter from the collection agency, establishes that Applicant is not responsible for this debt. I find that this debt has been resolved.

1.f. The SOR alleges that Applicant has an overdue debt for a collection account in the approximate amount of \$94. Applicant admitted this allegation in his RSOR. At the hearing, he testified that this debt was paid in full in about February 2015. (Tr at 40-42.) Exhibit C, a letter from the collection agency, establishes that Applicant is not responsible for this debt. I find that this debt has been resolved.

Applicant testified that he and his wife now each take care of some of the bills, and he follows up to make certain they are all paid. He also regularly checks on his credit report, and as far as he knows, he always pays his bills in a timely fashion. (Tr at 74-75.)

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, lack of candor, dishonesty or unwillingness to comply with rules and regulations.

2.a. It is alleged in the SOR that Applicant failed to provide truthful and candid answers to Questions asked under section 26 of an Electronic Questionnaires for Investigations Processing (e-QIP), executed by him on July 1, 2013. (Exhibit 1.) The questions asked whether in the last seven years Applicant had been over 120 days delinquent on any debt. Applicant answered, "No," to this question and listed no debts. It is alleged that Applicant deliberately failed to disclose that information concerning his finances and overdue debts as set forth in paragraph 1, above. Applicant admitted this allegation in his RSOR.

At the hearing, Applicant testified that he had not looked at his credit report for several years, and he was unaware that he had any delinquent debt on his report. He also testified that this was the first time he ever completed an e-QIP, and he received no help from anyone in completing the form. He was also asked to hurry to complete the e-QIP. Applicant explained that he only learned that he had delinquent debts from a Government investigator, who questioned him about these debts, after he completed the e-QIP. He credibly averred that he did not reveal his debts because he was not aware that he had overdue debts. (Tr at 42-44.)

Applicant also explained that his sister, who had raised him, had died just two weeks prior to his completing the e-QIP, and he had just returned back to work so he was not in a proper frame of mind to complete the form. Applicant stated that he would certainly obtain a current credit report before he were to complete an e-QIP in the future. (Tr at 44-48.)

Upon questioning from Department Counsel, Applicant did concede that he had been aware of the judgement listed as 1.a. on the SOR and he should have at least included that debt. He stated that he did not include that debt because he made a mistake. (Tr at 51-52.)

Mitigation

Applicant submitted five extremely positive character letters on his behalf. (Exhibit P.) Applicant also submitted a current Personal Financial Statement, dated January 19, 2016. (Exhibit D.) It shows that Applicant's monthly income is \$6,680, his expenses are \$3,065, and his payments for debt total \$1,482, leaving a net monthly remainder of \$2,133. Applicant also submitted his Performance Evaluations from his current employer. (Exhibit I.) In 2015, his overall rating was: "Significantly Exceeds Expectations." Finally, Applicant submitted eight certificates and awards for achievement that he has earned, including a Certificate of Achievement for "Setting Your Financial Goals and Creating a Budget" that he earned in December 2015. (Exhibit H.)

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

Paragraph 1 (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 had accumulated significant delinquent debt.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. I find that because Applicant has received counseling and he has been paying off the first debt listed on the SOR and the other debts have all been resolved, AG ¶ 20(c) and AG ¶ 20(d) are applicable as Applicant has been counseled and there are “clear indications that the problem is . . . under control, and he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

I conclude that at this time Applicant has reduced or resolved his overdue debts, and his current debts are being paid in a timely manner. Therefore, Applicant has mitigated the financial concerns of the Government, and I resolve Guideline F for Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgement, 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.

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, lack of candor, and dishonesty. In reviewing the disqualifying conditions under Guideline E, I conclude that while Applicant should have been more careful in completing his e-QIP, there was no “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” by Applicant, because he testified credibly that he was not aware of his delinquent debts when he completed the e-QIP. I find that any incorrect information about his finances was due to mistakes in completing the form, rather than a wilful desire to mislead the Government. I do not find disqualifying condition ¶ 16(a) or any other disqualifying condition applies in this case against Applicant. I, therefore, resolve Guideline E 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why the mitigating conditions apply under Guidelines F and E, I find that the record evidence leaves me with no significant questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns under the whole-person concept.

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
Subparagraphs 1.a.-1.f.:	For Applicant
Paragraph 2, Guideline E:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge