



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



In the matter of:

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ISCR Case No. 14-06349

Applicant for Security Clearance

Appearances

For Government: Tovah Minster, Esq. Department Counsel
For Applicant: *Pro se*

01/06/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated December 6, 2015. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on August 11, 2016. A notice of hearing, dated October 13, 2016, was issued scheduling the hearing for November 15, 2016. Government Exhibits (GX 1-4) were admitted into the record. Applicant submitted Applicant Exhibits (AX A-D). He testified, but did not present witnesses. I kept the record open for additional documents until December 9, 2016. Applicant submitted (AX

E–J), which were entered into the record without objection. The transcript was received on November 21, 2016. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations) with the exception of SOR 1.e, 1.j, 1.k, and 1.l. He provided detailed explanations. Some of the delinquent debts were already paid, disputed, or in a payment plan.

Applicant is a 28-year-old security officer for a defense contractor. He is not married and has no children. He graduated from high school in 2007 and attended community college classes for a period of time, but did not obtain a degree. He served in the military on active reserve duty from 2008 to 2016, receiving an honorable discharge. He was deployed in 2010. He lived with his mother in 2012 to save money on expenses. Applicant has worked for his current employer since 2013. He believes he was granted a security clearance in 2008 while in the military. (GX 1) He completed a security clearance application in 2013. (GX 1)

Financial Considerations

The SOR alleges 12 delinquent debts including judgments, collection accounts, medical accounts, and student loan, which total approximately \$30,000 (GX 4) He was not aware of some of the alleged accounts.

Applicant had difficulty finding work after he left the military. He was unemployed for about four or five months in 2011. He could not pay all his loans and bills. He began to charge items on credit cards. He received unemployment benefits in the amount of \$370 a week. He had no other source of income. (Tr. 32)

As to SOR 1.a, a 2013 judgment in the amount of \$1,733, Applicant presented documentation that the judgment was settled for \$1,079. (AX D, J) As to SOR 1.b, a collection account in the amount of \$2,065, Applicant is in a payment arrangement plan. (AX A) He is current on the payments. (AX F) As to SOR 1.c, a collection account in the amount of \$6,784, Applicant settled the account in August 2016. (AX G) As to SOR 1.d, a charged off account in the amount of \$1,798, Applicant entered into a payment plan and the account is paid. (AX C, H, I) As to SOR 1.e, a collection account in the amount of \$1,671, Applicant believes he received a Form 1099-C. He could not locate the form. It does not appear on his credit report. (AX K) As to SOR 1.f, a collection account in the amount of \$467, Applicant paid this account (AX J). However, he does not recognize the account number that is associated with the phone account on the SOR. (Tr. 41) This account shows as a dispute on his credit report. As to SOR 1.g, a student loan in collection for an amount of \$4,726, Applicant was under the impression that the military was making the payments. He is researching the issue. (Tr. 43) As to the past-due account in SOR 1.h for \$261, Applicant is current on the

account. (AX K) As to SOR 1.i, in the amount of \$34, Applicant paid the account. (AX J)

As to SOR 1.j, a collection account in the amount of \$170, Applicant stated that he has been trying to obtain information about the account. (Tr 45) As to SOR 1.k, a collection account for \$166, Applicant stated that he believed it was satisfied, but he is not sure at this time. He is still trying to obtain information on the account. As to SOR 1.l, medical account in the amount of \$383, Applicant denies that he owes this amount. The issue has been an ongoing one with the insurance company. (Tr. 47) It does not appear on his credit report.

Applicant's annual salary is \$56,000. (Tr. 29) He has a savings account. He has a budget that he uses each month and is current with his daily bills. He has a small net monthly remainder. He is current on his car payment and daily expenses. He has a retirement account. (Tr. 52) Applicant has automatic monthly deductions from his account to pay his bills timely. He is now monitoring his credit reports to ensure that he is knowledgeable about his finances.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by

Department Counsel. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 as to the loyalty of the applicant concerned.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining 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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admits to delinquent debts that are listed in the SOR. The Government produced credible evidence to establish the debts. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate the security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

After leaving the military, Applicant was unemployed for a period of time. He lived with his mother to reduce his expenses. He went to school to improve his employment opportunities. He satisfied a judgment and paid or settled several of his debts. He entered into payment plans for most of the SOR debts and provided post-hearing submissions for documentation. He paid other non-SOR debts. He had circumstances that caused him financial difficulty. He took care of basic expenses. He did not ignore his creditors. He was credible and candid at the hearing that he did not know about some of the delinquent debts. He successfully disputed certain accounts. He is researching a few accounts such as the student loan and the medical account. He is now monitoring his credit. He has shown a commitment to resolving his debts. AG ¶ 20 (b), (c), (d) and (e) 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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is 28 years old and served in the military, receiving an honorable discharge. He was unemployed for a period of time. He continued to go to school to improve his job opportunities. He takes responsibility for what he owes. He paid some smaller SOR debts, as well as some non-SOR debts. He was credible and candid that he has been addressing his delinquent debts. He has paid, resolved, settled, or made payment arrangements for most of the SOR debts. He provided documentation of his payments and other evidence of payment arrangements. Applicant established that he has taken sufficient actions to reasonably and responsibly, within his limited finances, resolve delinquent debts. Applicant has shown that he can responsibly manage his financial obligations. He has no credit card debts. He supplemented the record with financial information. Overall, the record evidence leaves me without questions and doubts as to his judgment, trustworthiness, reliability, and eligibility for his security clearance. I conclude that Applicant has presented sufficient evidence of mitigation of his 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:

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| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a-1.l: | 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. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge