



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case: 15-00265
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Appearances

For Government: Andrew Henderson, Esquire, Department Counsel

For Applicant: *Pro se*

September 16, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be delinquent on 16 debts. A number of the debts were listed in duplicate entries on the SOR. He has made a good-faith effort to address all of his delinquent accounts. He no longer has any foreign contacts that are citizens of, or residents in, Thailand. He met his burden to establish mitigation under the guidelines for both Financial Considerations and Foreign Influence. Eligibility for access to classified information is granted.

Statement of the Case

On August 25, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations, and Guideline B, Foreign Influence. The 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) effective September 1, 2006.

Applicant answered the SOR on September 28, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on April 4, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 4, 2016, scheduling the hearing for May 18, 2016. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I, and Exhibits (GE) 1 through 6, which were admitted without objection. (Tr. 13-16, 56.) Applicant testified and offered seven exhibits (AE), marked AE A through AE G. DOHA received the transcript of the hearing (Tr.) on May 31, 2016. The record was left open for Applicant to submit additional exhibits. Applicant presented nine additional exhibits on June 26, 2016, marked AE H through AE P. Department Counsel had no objections to AE H through AE P, and they were admitted. The record then closed.

Procedural Ruling

Request for Administrative Notice

The Government requested I take administrative notice of certain facts relating to Thailand. Department Counsel provided a five-page summary of the facts, with citations to five Government documents pertaining to Thailand, marked HE I. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, and not subject to reasonable dispute. They include the following:

Since a military coup in May 2014, an interim military government has ruled Thailand. As a result of the coup the United States has suspended aid to Thailand and joint exercises with Thailand's military. In Southeast Asia, which includes Thailand, there is a continued risk of terrorism. Terrorist incidents occurred in Thailand in August 2015, February 2015, and February 2012. Additionally, International groups and U.S. officials have criticized Thailand's overall human rights record. (HE I.)

Findings of Fact

Applicant is 41 years old. He has worked for a government contractor since 2005. He served in the Navy from 1993 to 2002, and achieved the pay grade of E-5. He is single. (GE 1; AE O; Tr. 23, 27.)

The SOR alleged Applicant was delinquent in repaying 16 debts. It also alleged that Applicant's fiancée and her son were citizens of Thailand. His fiancée's mother, sisters, and brother were alleged to be citizens and residents of Thailand. In his Answer, Applicant denied all of the allegations. (Tr. 8-9.) His debts are documented in the record credit reports dated January 31, 2014; December 15, 2014; and April 1, 2016. (GEs 4 through 6.) After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant attributes his delinquent accounts to providing financial support to a former girlfriend during the course of their relationship, and to financially supporting his former fiancée.¹ He stated, "I made some really bad judgments when it comes to the women I was with and never knew - - really knew how bad financially it would hurt me."

Applicant hired a credit counselor to help him manage his debt and improve his credit score. (Tr. 22.) He provided copies of emails between himself and a credit counselor beginning in September 2014 that document his efforts to improve his credit score and resolve his debts. (AE G.)

The SOR alleged Applicant was delinquent on a charged-off account in the amount of \$20,772, as stated in subparagraph 1.a. This debt was for a joint credit card account that Applicant shared with the ex-girlfriend. It became delinquent in 2012. It was discharged by the creditor on December 20, 2014, in the amount of \$18,274.47. The creditor provided Applicant a 1099-C Cancellation of Debt. It was included in his 2014 individual income tax return. This debt is resolved. (GE 6; AE D; AE H; Tr. 32-34, 38-39.)

The SOR alleged Applicant was delinquent on a charged-off student loan in the amount of \$5,795, as stated in subparagraph 1.b. This debt was for an educational loan, as were the debts of: \$5,253 (subparagraph 1.d); \$8,399 (subparagraph 1.m); \$7,562 (subparagraph 1.n); and \$2,115 (subparagraph 1.o). All of these debts have been placed with the same creditor and have been delinquent since 2009. Applicant applied for and received forbearance on these accounts until September 1, 2016. Despite the forbearance, he made a \$1,420 payment on these debts, and then set up monthly payments of \$300. He documented his May 29, 2016 payment. He plans to resolve this debt in full over the next five years. These debts are being resolved. (AE F; AE I; Tr. 39-40.)

The SOR alleged Applicant was delinquent on a charged-off account in the amount of \$5,708, as stated in subparagraph 1.c. This debt was for a vehicle he purchased for the use of his then fiancée. It was repossessed. Applicant documented he settled this debt with the creditor for a total of \$1,728.68. This debt is resolved. (AE J; Tr. 35-38.)

The SOR alleged Applicant was delinquent on a collection account in the amount of \$3,239, as stated in subparagraph 1.e. This same debt is also identified as delinquent in subparagraphs 1.h and 1.k. It had been delinquent since at least 2012. Applicant presented a letter from this creditor that indicated this account was "closed" and the creditor is no longer collecting on this account. This debt is resolved. (GE 5; AE K; AE E; Tr. 40-43, 45.)

¹ His ex-girlfriend and his former fiancée are two different people.

The SOR alleged Applicant was delinquent on a charged-off account in the amount of \$435, as stated in subparagraph 1.f. This debt was for a retail store charge card and is the same account identified in subparagraph 1.j. Applicant claimed to have paid off this debt on September 15, 2015. Applicant presented a letter from this collection agent indicating the debt is paid. It is resolved. (AE C; AE L at 3; Tr. 44-46.)

The SOR alleged Applicant was delinquent on a credit card account in the amount of \$15,749, as stated in subparagraph 1.g. This debt is the same as that identified in subparagraph 1.p. Applicant presented documentation that he set up a payment plan with this creditor. He makes monthly payments of \$250. This debt is being resolved. (AE M; Tr. 46-48, 50.)

The SOR alleged Applicant was delinquent on a collection account in the amount of \$2,197, as stated in subparagraph 1.i. This debt is the same debt as the account identified in 1.l. (Tr. 49.) Applicant presented a letter from this creditor indicating that this debt has been paid. It is resolved. (AE L.)

Applicant drives a vehicle that he paid off in full in 2009. He saves money by living without air conditioning. He does not purchase luxury items. He pays all of his bills using a debit card. He does not use credit cards anymore. He is dedicated to fixing his credit. He pledged that he will not help others financially in the future. (Tr. 23-24, 54-55.)

Additional security concerns were raised under Guideline B because Applicant's former fiancée and her son were citizens of Thailand. His former fiancée's mother, sisters, and brother are citizens and residents of Thailand. Applicant's former fiancée was residing with him from August 2011 to January 28, 2015. However, their relationship ended in January 2015. She and her son moved out of Applicant's home in February 2015, and Applicant has not had any contact with her or her family since that time. (GE 3; Tr. 28-31.)

Applicant received the Joint Service Achievement Medal; the Navy Achievement Medal; two Good Conduct Medals; the National Defense Service Medal; and the Armed Forces Expeditionary Medal. His supervisor, who wrote a letter of support, indicated Applicant is a great role model and has an excellent work ethic. He indicated Applicant has apprised him of the significant steps he is taking to resolve his past financial situation. (AE O; AE P.)

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 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

From 2009 to 2014, Applicant accumulated delinquent debts that he had been unable or unwilling to satisfy. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

(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;

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts arose between 2009 and 2014. Since 2014, he has been working to address all of his delinquencies as funds would allow and has contacted each of his creditors. He has paid three debts: subparagraph 1.c; subparagraph 1.f (duplicated in subparagraph 1.j); and subparagraph 1.i (duplicated in subparagraph 1.l). He is making payments on: his student loans (identified in subparagraphs 1.b, 1.d, 1.m, 1.n, and 1.o), and subparagraph 1.g (duplicated in subparagraph 1.p). The creditors on two debts: subparagraph 1.a and 1.e (duplicated in subparagraphs 1.h and 1.k) have forgiven the debts and issued Applicant documentation to confirm their forgiveness, despite his efforts to contact them to make a payment plan. While his failure to pay these significant debts indicated poor financial judgment in the past, he demonstrated recent good-faith efforts to resolve them in reaching out to the creditors to make payments. He was unable to follow through with his intent because the debt had legally been forgiven, as documented. Given his actions to resolve his debts, his intention to continue to make payments on his payment plans, and his stated unwillingness to help

out anyone else financially, it is unlikely that similar delinquencies will recur, such that his previous problems do not cast doubt on his trustworthiness. The evidence supports the application of AG ¶ 20(a).

Applicant provided evidence that he has worked with a credit counselor to address his debts. There are sufficient indications that his financial problems are slowly coming under control through his good-faith efforts to pay and resolve the delinquent bills. Both AG ¶ 20(c) and AG ¶ 20(d) provide mitigation.

While Applicant has lacked sufficient financial resources to fully repay all of his debts, and two of the accounts were forgiven by his creditors, he has made reasonable efforts to resolve them all, including contacting the creditors of the forgiven debts to attempt to arrange payments. He has reduced his overall debt. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.²

Applicant has been addressing his debts since 2014. There is no evidence in the record that would lead me to conclude he will not continue to resolve the remaining debts through his mutually agreed upon payment arrangements. He is aware of the potential negative implications future financial delinquencies could have on his employment.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

² ISCR Case No. 07-06483 at 2-3 (App. Bd. May 21, 208) (internal citations and quotation marks omitted).

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

From August 2011 to January 2015 Applicant resided with his former fiancée and her son. They are both citizens of Thailand. Additionally, her mother, sisters, and brother are citizens and residents in Thailand. Thailand is run by an interim military government and there is a terrorist presence there. As a result, there is a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion present in having foreign relatives in Thailand. The evidence raises the above security concern, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate that concern.

I have also analyzed all of the facts and considered all of the mitigating conditions under AG ¶ 8. The following are potentially applicable:

- (a) the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization and interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; and
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant and his former fiancée ended their relationship in January 2015. Applicant has not had contact with her, her son, or her extended family members since then. Applicant has severed all ties with them, and there is no indication that such contact would reoccur. It is unlikely that Applicant could be placed in a position of having to choose between the interests of a these foreign individuals and interests of the United States, since the relationship has been terminated. Further, his former military service and dedication to his job provide evidence of longstanding relationships to the United States, which would cause him to resolve any potential conflict in the interest of the United States. All of the above mitigating conditions 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.

According to 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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant has been a dedicated employee since 2005. He served honorably in the Navy from 1993 to 2002. While he demonstrated poor judgment in financially supporting women that abused his credit, he has made a serious commitment to rehabilitating his credit issues in the past two years. Further, he is no longer in a relationship with a citizen of Thailand and has removed the foreign influence concerns from his life. His recent personal and financial decisions reflect that he currently displays the responsibility, judgment, and trustworthiness required to hold a security clearance. Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Financial Considerations and Foreign Influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.p: For Applicant

Paragraph 2, Guideline F: 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.

Jennifer I. Goldstein
Administrative Judge