



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



In the matter of:)
)
) ISCR Case No. 15-00789
)
Applicant for Security Clearance)

Appearances

For Government: Candace Garcia, Esq., Department Counsel
For Applicant: *Pro se*

09/21/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On August 31, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 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), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on April 11, 2016. A notice of hearing was issued on June 14, 2016, scheduling the hearing for August 18, 2016. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-G. I kept the record open until September 19, 2016, for additional documentation. He submitted a packet of documents, which was received into the record without objection and marked as exhibit (AX) H. The transcript was received on August 26, 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 SOR allegations under Guideline F, with the exception of 1.b. He provided explanations for each alleged debt.

Applicant is 57 years old. He obtained his undergraduate degree in 1985. Applicant is divorced and has two children. He is a senior engineer for a defense contractor. He has been with this employer since 2006. He completed a security clearance application in 2012. (GX 1) He has held a security clearance since 1993.

The SOR alleges three delinquent debts, which include a collection account in the amount of \$175; indebtedness to the Internal Revenue Service (IRS) for a 2008 Federal tax lien in the amount of \$23,211; and a charged off account in the amount of \$3,044.(GX 2;3)

At the hearing, the Government stipulated that the SOR debt alleged in 1.a in the amount of \$175 was paid in 2015. (AX A; Tr. 12) Applicant had no knowledge of the cable debt as it never appeared on his monthly bill. He acknowledged that he never monitored his credit report. (Tr. 40)

As to SOR allegation 1.b, in the amount of \$23,211, for a 2008 federal tax lien, Applicant disputed the debt. He provided documentation that he does not owe any debt to the IRS. (AX D) He explained that the IRS owes him and at the hearing, produced a 2016 account transcript. (AX G) The IRS lost his tax returns for the years 1999, 2000, and 2003. They placed a lien against Applicant in 2014, and took \$780 from his bi-weekly paycheck. (Tr. 21) The IRS recognized its mistake and sent applicant two separate checks in 2016. (AX G) As post-hearing submissions, Applicant provided IRS account transcripts for years 1999, 2000, and 2003. Each shows an account balance of zero, with a date of lien removal in November 2014. (AX H) He visited the IRS office several times and finally received the requisite transcripts that show Applicant does not owe any money to the IRS. (AX H)

As to SOR allegation 1.c, Applicant provided documentation that the charged-off account in the amount of \$3,044 has been paid. (AX E) The debt was the result of a company credit card account that Applicant knew nothing about. He learned during his OPM interview that the account appeared on his credit report. He believed that the account had been paid about eight years ago. Applicant also produced a receipt denoting payment in full and a copy of the visa card payment. (AX H)

Applicant was candid in that he has worked with the IRS for years, but they did not provide information to him concerning the reason for the lien. (AX D; Tr. 37) He received two checks from the IRS in 2016, which he showed at the hearing, one for \$17,368.85 and another for \$2,933.91. The checks were noted as refunds for tax years 2000 and 2010. According to Applicant's calculations, the IRS still owes him approximately \$4,000. He claims that he has been disputing the liens since 2008. (Tr. 47)

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.

The U.S. 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

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.

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

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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. It also states that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The Government produced credible evidence that Applicant incurred delinquent debt and a Federal tax lien. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant’s financial difficulties make it difficult to conclude that it occurred “so long ago.” Applicant’s financial difficulties occurred in the past eight years. He disputed the tax lien for years. Based on his documentation, I accept this lien as removed and resolved since 2014. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) fully applies.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies. His federal tax lien appears to be a convoluted situation that has been resolved and was no fault of Applicant.

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

⁶ *Id.*

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has application. He paid his debts in 2015. FC MC AG ¶ 20(c) (the person has received or is receiving counseling) does not apply, but there are clear indications that the problem is being resolved, or is under control.

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 57 years old. He is a mature and educated man. He has held a security clearance without incident for 35 years. He had no delinquent debts before the recent collection accounts. When he learned about them, they were resolved. As to the IRS lien, it is somewhat convoluted, but Applicant proved that he did not owe the IRS and had disputed the issue for many years. He provided documentation from IRS account transcripts that show zero amounts due and has received two checks in 2016 as refunds. The transcripts show that any liens were removed in 2014.

Applicant had no other financial issues. He was candid. I have no doubts about his judgment, trustworthiness, or reliability. He has mitigated the security concerns under the financial guideline in this case.

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 |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraph 1.c: | 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