



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



In the matter of:

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) ISCR Case No. 15-01557
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Applicant for Security Clearance

Appearances

For Government: Douglas Velvel, Esq., Department Counsel

For Applicant: J. Dale Gipson, Esq.

09/13/2016

Decision

WHITE, David M., Administrative Judge:

Applicant formerly had some delinquent debts that arose without his knowledge. He took responsible steps to address them, all are now resolved, and recurrence is unlikely. Resulting security concerns were mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on March 31, 2014.¹ On October 7, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² 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*

¹Item 2.

²Item 1.

Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on November 9, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on January 27, 2016. A complete copy of the File of Relevant Material (FORM)⁴ was received by Applicant on February 3, 2016, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted a written response to the FORM on February 26, 2016. He made no objection to any of the Items contained therein, which are admitted into evidence.⁵ Department Counsel did not object to the admissibility of Applicant's response, which is admitted into evidence as Exhibit (AE) A. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on March 29, 2016.

Findings of Fact

Applicant is 49 years old. He has worked as an engineer for a DoD contractor since March 2003. He served honorably on active duty in the Army from 1986 to 1990, and in the Army Reserve and National Guard from 1990 to 1999. He held a security clearance throughout his military service and his current employment, without incident. He graduated from high school in 1985, and earned a bachelor's degree in 1998. He is married, with two children ages 15 and 11.⁶

³Item 1.

⁴Department Counsel submitted five Items in support of the SOR allegations. Item 3 is an unsworn summary of an interview Applicant provided to an investigator from the Office of Personnel Management (OPM) on May 27, 2014. The summary was neither authenticated by a Government witness nor adopted by Applicant, so it would not be admissible in evidence against him, over objection, pursuant to Directive ¶ E3.1.20. Department Counsel included a note in the FORM advising Applicant of the potential inadmissibility of Item 3, and indicating that, "the extent to which any facts contained therein are relied upon by the Government is specifically noted within this FORM." Applicant's response to the FORM was prepared by his counsel, and contained no objection to Item 3. I will not normally construe an unrepresented Applicant's silence in response to an attempt to introduce inadmissible evidence as a knowing waiver. However, in this case Applicant is represented by counsel who was specifically put on notice of the opportunity to object to this evidence and declined to do so. The Government relied on Item 3 only for the propositions that, according to Applicant, the two significant debts alleged in the SOR were incurred by his wife without his knowledge because she had a problem that caused her to "overshop." (FORM at 2.) This explanation is consistent with all other record evidence and not disputed by Applicant. Therefore, for the limited purpose that Department Counsel submitted Item 3, as noted above, it is admitted into evidence.

⁵As noted in footnote 4, Item 3 is admitted for the limited purpose described therein.

⁶Item 2.

In his response to the SOR, Applicant admitted that he formerly owed the four debts alleged in the SOR, explained their origins, and provided documents from each creditor showing that he fully repaid each of them.⁷ Applicant's admissions are incorporated in the following findings.

SOR ¶ 1.a describes a \$371 debt originally owed to a major telephone company that became delinquent in January 2015. Applicant had to contact the company involved on several occasions before he could find anyone who could identify what it involved. He finally determined that it apparently arose from a switch-over of his phone service, and made full payment to the debt collection service that was then holding the account on November 7, 2015.⁸

SOR ¶ 1.d describes a \$59 medical debt arising from an April 2014 hospital visit by his daughter. It was placed for collection in September 2014 after the original creditor failed to submit it to Applicant's medical insurance company. Applicant unsuccessfully attempted to get the debt processed through his insurance, then paid the debt himself on October 31, 2015, in order to resolve it.⁹

SOR ¶¶ 1.b (\$20,780) and 1.c (\$10,567) describe two joint credit card accounts that were opened in 2005 and used by Applicant's wife without his knowledge. Both accounts became delinquent, at their respective credit limits, in August 2012. During that period, his wife was suffering from clinical depression and self-medicated by shopping extensively. She has since been diagnosed with, and received successful medical and psychological treatment for her depression. She remains under continuing care from her physician, and no longer uses credit cards.¹⁰

Applicant's wife originally incurred more delinquent credit card debt than is reflected in the SOR. In October 2012, after becoming aware of the scope of the problem, Applicant and his wife joined and made payments to a well-respected major debt relief company to consolidate and resolve their debts. By October 2013, many of those debts had been settled and paid. However, the bank holding the two accounts listed in SOR ¶¶ 1.b and 1.c refused to negotiate reduced settlements with the company. It instead charged-off the debts and issued IRS Forms 1099-C in 2014, reflecting their cancellation. Applicant and his wife paid the resulting income taxes as required.¹¹

⁷Item 1.

⁸Item 1; Item 4 at 1.

⁹Item 1; Item 5 at 2.

¹⁰Item 1; Item 3; Item 4 at 2, 3; AE A.

¹¹Item 1; Item 2.

After receiving the October 2015 SOR that indicated the two charged-off credit card accounts were still of security concern to the Government, Applicant approached his company's management to inform them of the situation. The company's owner, for whom he had then worked for more than 12 years and whose trust and faith he earned during that time, offered to lend him \$32,000 to pay off the accounts on terms that fit within his budget. Applicant contacted the bank that had charged off those accounts, and made full payments toward each account on November 2, 2015. On February 22, 2016, Applicant and the company's owner executed a formal promissory note calling for him to make 65 consecutive monthly payments of \$506, starting March 15, 2016, to repay the loan's principal amount and accrued 1% annual interest.¹²

Applicant provided a monthly family budget reflecting payments toward this loan, his mortgage, other outstanding debts that are not delinquent, and family living expenses that total \$6,657. This amount included a \$1,000 monthly payment toward a loan from his 401(k) retirement account that was scheduled to end in April 2016 upon completion of the repayment schedule. The budget also shows the net monthly income of \$8,057 that is earned by Applicant and his wife. This resulted in a monthly surplus of \$1,400 through April 2016, and \$2,400 thereafter.

Significant trust and confidence in Applicant's character was evidenced by the owner of his company when she lent him sufficient funds to repay all of the formerly delinquent debts he had not already resolved through the debt relief program. The company president, who has known him throughout his employment and worked closely with him on an important classified program over the past five years, wrote a letter describing his trustworthiness, dedication, exemplary performance, initiative, and behavior consistent with his position of trust. He also described a commendation Applicant recently received from a senior Government Program Director for whom they provide contract support services. The commendation discussed Applicant's technical excellence, dedication, expertise, professionalism, and untiring efforts, which repeatedly and directly contributed to successful mission planning.¹³

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 (DCs) and mitigating conditions (MCs), 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

¹²Item 1; AE A.

¹³AE A.

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. 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, “[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 under 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.

The record evidence raised potential security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's wife incurred a number of consumer debts without his knowledge over at least a five-year period leading up to 2012. Most of them were resolved between October 2012 and October 2013 through a debt relief/consolidation program, into which they made regular monthly payments. The two small debts alleged in SOR ¶¶ 1.a and 1.d arose after this program was completed due to confusion and billing errors. They were promptly repaid when brought to Applicant's attention. The bank holding the two larger debts alleged in SOR ¶¶ 1.b and 1.c declined to negotiate any settlement, and instead charged off those accounts and issued IRS Forms 1099-C reporting cancellation of the debts. Applicant paid the resulting income taxes, but later borrowed funds on excellent terms to fully repay both accounts. Applicant presently has no delinquent debt, and no other Guideline F DC was established.

The guideline includes four MCs in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial situation and history:¹⁴

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

Applicant's circumstances and actions to resolve his formerly delinquent debts establish substantial mitigation under all four of these MCs. The debts arose under unique circumstances that were largely beyond his control because his wife, suffering from clinical depression, incurred the two large ones without his knowledge. The two small debts arose from billing confusion and were promptly resolved. Applicant

¹⁴Applicant did not dispute his responsibility for the SOR-alleged debts, so AG ¶ 20(e) does not pertain.

attempted to negotiate resolution of the two credit card debts through a reputable debt relief company, but the bank involved cancelled the debts instead and he paid the resulting taxes. Nevertheless, to demonstrate his financial responsibility and determination to repay his lawful creditors, he borrowed funds from his company president on favorable terms and repaid both of those debts as well. His budget reflects a significant monthly surplus, and his wife is under continuing and successful medical treatment for her depression to prevent recurrence. Applicant's former financial problems are resolved, and all other indications show that his financial situation 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 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 pertinent facts and circumstances surrounding this case. Applicant's explanation for his conduct with respect to the accrual of the debts in question is reasonable, and reflects no serious doubts about his trustworthiness or reliability. He is a mature and responsible engineer who has consistently performed in an exemplary manner in support of important DoD classified programs. The potential for pressure, coercion, and duress from his financial situation is nonexistent, and recurrence of similar circumstances is unlikely. Overall, the record evidence leaves me with no doubt as to Applicant's present eligibility and suitability for a security clearance. He fully met his burden to mitigate the security concerns arising from the alleged financial considerations.

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.d: 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.

DAVID M. WHITE
Administrative Judge