



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01618

Appearances

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: *Pro se*

08/05/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns and mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 21, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and 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 by the DOD on September 1, 2006.

Applicant responded to the SOR on November 25, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on January 13, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections

and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 21, 2016. He responded with a letter and documents that I have marked Applicant's Exhibits (AE) A through D. The case was assigned to me on March 15, 2016. The Government exhibits included in the FORM and AE A through D are admitted in evidence without objection.

Findings of Fact

Applicant is a 52-year-old employee of a defense contractor. He has worked for his current employer since April 2014. He served in the National Guard from 1982 to 1983 and on active duty in the U.S. military from 1983 until he retired with an honorable discharge in 2008. He married in 2002 and divorced in 2008. He married his second wife in 2008. He has an adult child and two adult stepchildren.¹

The SOR alleges nine delinquent debts totaling \$14,681. However, credit reports show that Applicant is only an authorized user and not responsible for the debts alleged in SOR ¶¶ 1.a (\$4,788), 1.b (\$3,863), 1.d (\$728), and 1.e (\$556). Additionally, the debts alleged in SOR ¶¶ 1.c (\$759) and 1.i (\$760) are duplicates.² Applicant denied owing the remaining debts, which total less than \$4,000.³

SOR ¶¶ 1.f (\$157) and 1.g (\$164) allege debts owed to the same telecommunications company. Applicant admitted he had an account with the company, but he stated the two accounts were duplicates and that the debt was paid in 2014. The May 2014 combined credit report lists two accounts as reported by Equifax, Experian, and TransUnion. The SOR ¶ 1.g debt has a date of last action of October 2012. That debt is not listed on the September 2015 Equifax credit report. That report lists the SOR ¶ 1.f debt with a date of last payment of September 2014 and a balance of \$157. Applicant submitted proof that he paid the company \$157 in October 2014. He also submitted an October 2015 letter from the telecommunications company certifying that the account was paid.⁴

Applicant denied owing the \$2,906 account alleged in SOR ¶ 1.h and the duplicate accounts alleged in SOR ¶¶ 1.c (\$759) and 1.i (\$760). The debts are listed on both credit reports in evidence. Applicant has spent much of the last eight years working overseas while his wife remained at home. A few bills may have been overlooked during that time. He initially stated that he had no knowledge of the accounts. In his response to the FORM, he stated that he realized that he was responsible for the \$759 debt

¹ Item 2; AE A, D.

² The account numbers are the same. The bank identified in SOR ¶ 1.c formerly did business as the bank identified in SOR ¶ 1.i. See http://www.bbb.org/centralohio/business-reviews/credit-cards-and_plans/comenity-bank-in-columbus-oh-6558/.

³ Items 1, 3, 4; AE B.

⁴ Items 1, 3, 4; AE B.

alleged in SOR ¶ 1.c and that he will pay the debt. Applicant stated that he is committed to paying his debts and that any delinquent accounts will be resolved.⁵

Applicant was working overseas when he submitted a Questionnaire for National Security Positions (SF 86) in May 2014. There is no evidence that he submitted an SF 86 in May 2013.⁶ He did not list any delinquent debts under the financial questions. Applicant denied intentionally falsifying the SF 86. He stated that he did not list any of the accounts on his SF 86 because he was unaware of them.⁷ I find that there is insufficient evidence for a determination that he intentionally provided false information on the SF 86.

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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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

⁵ Items 1, 3, 4; AE A, B.

⁶ The SOR alleged that Applicant intentionally falsified an SF 86 in May 2013. It did not allege falsification of the May 2014 SF 86 in evidence.

⁷ Items 1, 2; AE A.

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 safeguard 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 EO 10865 provides that adverse 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

Guideline F, Financial Considerations

The security concern 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 under AG ¶ 19. The following are potentially applicable in this case:

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

Two credit reports list that Applicant had delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Applicant is only an authorized user and not responsible for the debts alleged in SOR ¶¶ 1.a (\$4,788), 1.b (\$3,863), 1.d (\$728), and 1.e (\$556). Those allegations are concluded for Applicant.

SOR ¶¶ 1.c (\$759) and 1.i (\$760) allege the same debt. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 1.i is concluded for Applicant.

SOR ¶¶ 1.f (\$157) and 1.g (\$164) also appear to be duplicates. In any event, Applicant successfully disputed owing the debt alleged in SOR ¶ 1.g, and he

established through documentary evidence that the debt alleged in SOR ¶ 1.f was paid in October 2014, almost a year before the SOR was issued. SOR ¶¶ 1.f and 1.g are concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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; and

(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.

There are only two debts totaling \$3,666 that are left unresolved. Applicant has spent much of the last eight years working overseas while his wife remained at home. In his response to the FORM, he stated that he realized that he was responsible for the \$759 debt alleged in SOR ¶ 1.c and that he will pay the debt. Applicant may have overlooked the remaining debt while he was working overseas. He intends to pay his debts, which should include that debt. The two unresolved debts are insufficient to cast doubt on Applicant's reliability, trustworthiness, and good judgment. Financial considerations security concerns are mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

SOR ¶ 2.a alleges that Applicant intentionally falsified an SF 86 in May 2013. There is no evidence that Applicant submitted an SF 86 in 2013. Additionally, there is insufficient evidence for a determination that Applicant intentionally provided false information on the May 2014 SF 86. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded 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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and F in this whole-person analysis.

I considered Applicant's 26 years of honorable military service and his years working overseas for defense contractors. Those factors outweigh any remaining financial issues, which are relatively minor.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns and mitigated the financial considerations security concerns.

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.i:	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.

Edward W. Loughran
Administrative Judge