



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



In the matter of:

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ISCR Case No. 15-02418

Applicant for Security Clearance

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: Alan V. Edmunds, Esq.

11/04/2016

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 October 26, 2015. 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 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 13, 2016. A notice of hearing was issued scheduling the hearing for September 8, 2016. Government Exhibits (GX 1-3) were admitted into the record. Applicant testified and submitted Applicant Exhibits (AX) A-O. At his request, I kept the record open until September 22, 2016. Applicant submitted Applicant Exhibits (AX P-V) The transcript was received on

September 16, 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 allegation 1.a and denied the remaining factual allegations under Guideline F (Financial Considerations).

Applicant is a 40-year-old operating engineer for a defense contractor. He is divorced, with two children. Applicant has worked for his current employer since 2011. He has never held a security clearance. (GX 1)

Financial Considerations

The SOR alleges 20 delinquent debts totaling about \$12,000. (GX 5) Applicant filed for Chapter 7 bankruptcy in June 2005 and the debts were discharged in October 2005. (SOR1.a) He acknowledged the bankruptcy, which he stated was the result of his 2005 divorce, debts from the marriage, and the fact that he had full custody of his children. (Tr. 19) The reduction in income and the fact that he received no money from his ex-wife resulted in delinquent bills. His wife previously managed the household bills.¹ Applicant denied the delinquent debts alleged in the SOR, which consist of collection accounts, judgments, or medical accounts. He stated that he was not aware of many of them, has paid them, or they are in a repayment plan (AX B). He entered into a debt management plan in 2015 and has made monthly payments of \$391, which were disbursed to creditors.² (AX B) He also provided an updated status sheet of how much has been paid into the repayment plan and the balance owing on each account. (AX L)

As to SOR 1.b, \$1,199 from 1999, the judgment was satisfied on May 12, 2011. (AX A). As to SOR 1.c, \$292 for 2015 a medical account, Applicant submitted documentation that the account was part of a repayment plan and is paid. (AX P). As to SOR 1.d, \$102, he stated that he was not aware of the medical debt, but it was paid as part of his repayment plan. (AX I., L). As to 1.e, \$446, for a cable account, this is included in his repayment plan. (AX B) As to 1.f, \$15, Applicant provided documentation that the medical account is paid in full and was merged with another medical account that appears in 1.h. (AX U) As to 1.g, \$475, a collection account, this is in repayment status. (AX B) As to the debt in 1.i, \$630 for a collection account to a cable company, that is included in the repayment plan. As to SOR 1.j, \$607, Applicant settled the account in 2015 and provided documentation. (AX C) As to SOR 1.k, \$513 for a cable account, it is included in the plan. AS to SOR 1.l, \$182, Applicant paid the amount, which was for child care, and submitted documentation. (AX Q) As to SOR 1.m, \$142, that debt was satisfied in 2015 and Applicant provided documentation. (AX D) As to SOR 1.n, \$3,592, Applicant provided an IRS form 1099, cancellation of debt. (AX R) As to SOR 1.o, \$258, that debt has been paid. (AX U) As to SOR 1.p, \$294, is in the

¹His ex-wife died in 2007.

²The payment amount has been reduced to \$365 as the debts are paid.

repayment plan, but not fully paid. (Tr. 54) As to the debt listed in SOR 1.q, a medical account, Applicant provided a payment receipt. (AX E) As to SOR 1.r, \$1945, 1.s, \$795, 1.t, \$43, and 1.u, \$236, these medical accounts are paid. (AX U)

Applicant's annual salary is \$85,000. He has a budget that he submitted as a post-hearing document. (AX V) He is current with his daily bills. He has a net monthly remainder of about \$1,000 a month. He completed financial counseling courses. (AX M). He has no delinquent debts and is current with tax filings. Applicant also provided documentation that he has paid other bills that are not listed on the SOR.

Applicant submitted character references from friends, co-workers, and his security officer. (AX G) Each letter attests to Applicant's loyalty, trustworthiness, and good work ethic. He is respected by his peers. Applicant is described as a dedicated and trustworthy employee. His former supervisor from 2010 described Applicant as being a team player, professional and reliable. His friend of many years attests to Applicant's devotion to family and the challenges he had when he divorced his wife and her sickness and death. (AX O) In order to reduce expenses, he moved in with his mother.

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. . . .³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ 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 including

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

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

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

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

⁸ *Id.*

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 a 2005 bankruptcy filing and had 20 delinquent debts on his credit report. 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 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.

Applicant is the sole provider for his one son. He experienced divorce, responsibility for debts that were not discharged in bankruptcy and medical bills. He provided also for his second child from a later relationship. He was credible when he explained that he was not aware of many of the debts. He enrolled in repayment plan in 2015 and has consistently paid into the agreement by which some bills have been paid and others are currently being paid. He has received financial counseling. He had not previously looked at this credit report and was unaware of the delinquent obligations listed there. He is steadily employed and has a budget. He has mitigated the financial concerns.

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 a single parent providing for his son. His divorce and the illness and death of his ex-wife impacted his finances. He filed for bankruptcy protection in 2005, but subsequently acquired new delinquent debt. He was not aware of many of the accounts as he did not check his credit report. He moved home with his mother to further reduce expenses.

Applicant enrolled in a debt management plan and produced documentation in detail of the accounts that are included and what is paid in full. He is current in his payments. He has established a track record of responsible actions toward his finances. He completed financial counseling and works from a budget. He is earning a steady income. He is a family man. Applicant received character references that rate him as a loyal and reliable person. He has mitigated the financial consideration 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.u:	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

