



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02619

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel

For Applicant: Sean M. Bigley, Esq.

11/01/2016

Decision

DAM, Shari, Administrative Judge:

Applicant has resolved all 11 alleged delinquent debts. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Statement of Case

On October 4, 2012, Applicant submitted a security clearance application (SCA). On October 9, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on November 5, 2015 (AR), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On February 18, 2016, Department Counsel submitted the Government's

written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant on February 19, 2016, and received by him on March 12, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. In response to the FORM, he timely submitted additional exhibits (Response). Applicant's Exhibits (AE) are marked as AE A through AE N. DOHA assigned the case to me on September 9, 2016.

In his Response, Applicant objected to Government's Item 4, which is a Report of Investigation (ROI) from the background investigation of Applicant. The seven-page document is a summary of an interview of Applicant conducted on January 2, 2013. An ROI may be received and considered as evidence when it is authenticated by a witness. Item 4 is not authenticated.¹ Accordingly, it is not admissible and is not considered in this Decision.

Findings of Fact

Applicant admitted all allegations contained in Paragraph 1 of the SOR. (Item 2.) His admissions are incorporated into these findings of fact.

Applicant is 34 years old and unmarried. He graduated from high school in 1999. He has worked for a federal contractor since April 2008 and his current employer since November 2014. He is stationed in the Middle East. He has held security clearances in the past. (Item 3.)

Applicant disclosed debts in his October 2012 SCA, and noted that some were based on financial negligence. (Item 3.) In his AR Applicant reiterated that some debts were the result of the mismanagement of his financial portfolio and adolescent financial mistakes. (Item 2.) In February 2014 Applicant enrolled in a credit restoration program to improve his credit standing. (AE H.)

Based on credit reports (CRs) from 2010, 2012, 2015, and 2016, the SOR alleged 11 debts, which started to become delinquent between 2007 and 2012. They totaled about \$24,000. (Items 5, 6, 7, and 8.) Ten of the eleven debts are paid; and one is being paid through monthly payments. The resolutions are noted below:

SOR ¶ 1.a was a \$3,015 judgment filed in 2008. It was paid in January 2012. (AE C.)

SOR ¶¶ 1.b through 1.d are duplicates of the above judgment. (AE C.)

¹ Directive, Enclosure 3, ¶ E3.1.20; see ISCR Case No. 11-13999 (App. Bd. Feb. 3, 2014) (the Appeal Board restated existing case law that a properly authenticated report of investigation is admissible).

SOR ¶ 1.e was a \$1,874 credit card debt that was settled and paid in February 2013. (AE D.)

SOR ¶ 1.f was a \$4,200 personal loan that was charged off and paid in full in March 2016. (AE E.)

SOR ¶¶ 1.g, 1.h, 1.i, and 1.j were debts for unpaid parking tickets issued to Applicant after a relative used his car. They totaled \$1,314 and were paid in 2014. (AE F.)

SOR ¶ 1.k was a personal loan for \$12,007 that Applicant obtained in 2007 to pay living expenses. Applicant has been making monthly payments of \$250 toward it since October 2012. The balance is about \$6,000. (AE G.) It is being resolved.

Applicant submitted his budget. His net monthly income is \$11,000 and expenses are \$2,500, leaving about \$8,500 remaining. (AE I.) According to a 2016 CR, he has not accrued additional delinquent debts. (Item 8.)

Applicant received a significant promotion and pay increase from his employer in April 2015. (AE A.) He submitted character letters from a friend and two co-workers. All three attest to Applicant's trustworthiness, honesty and reliability. They recommend him for a security clearance. (AE B.)

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 (AG) 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(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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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.”

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.²

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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.

Applicant has a history of delinquent debts. From 2007 to 2012, he accumulated 11 delinquent accounts totaling over \$24,000. That history and an inability or unwillingness to pay lawful debts, raise security concerns under the above disqualifying conditions, and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four 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;
- (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.

There is insufficient evidence to establish mitigation under AG ¶ 20(a) and AG ¶ 20(b). Applicant acknowledged that some of his problems arose as a consequence of making poor financial decisions when he was younger. Those were circumstances within his control. Applicant established mitigation under AG ¶ 20(c). He submitted evidence of financial counseling and a solid budget. A recent CR indicates that his financial problems are under control. Applicant demonstrated a good-faith effort to resolve debts and establish mitigation under AG ¶ 20(d). He submitted evidence that he paid a judgment in 2012, a debt in 2013, several debts in 2014, and a debt in 2016. He has made regular payments on another debt since 2012. All alleged debts are resolved.

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 pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who received a significant pay increase and promotion in April 2015 from his employer, demonstrating successful employment. Beginning in 2012 he started resolving delinquent debts. He presented evidence that 10 of the 11 SOR alleged debts are paid, and that he is paying the remaining debt through monthly payments and has sufficient money in his budget to resolve it. At this time the potential for pressure, coercion, and duress from Applicant's financial situation is diminished. Overall, the record evidence leaves me without doubts as to Applicant's present eligibility and suitability for a security clearance. He met his burden to mitigate the security concerns arising from 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.k:

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.

SHARI DAM
Administrative Judge