



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-02673
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Frederick J. Assenza, Esq.

07/19/2016

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by a looming financial crisis triggered by a sharp decrease in his family's household income. He took proactive, prudent steps to address his debts. He retained the services of a debt consolidation firm that helped him consolidate and resolve his debts. For about four years, Applicant paid on a consistent monthly basis into the firm's debt repayment plan. He satisfied his debts. He did not falsify his security clearance application. Clearance is granted.

History of the Case

On September 26, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations and personal conduct guidelines.¹

¹ This action was taken under Executive Order (E.O.) 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 by the Department of Defense on September 1, 2006.

On October 9, 2015, Applicant answered the SOR and requested a hearing to establish his continued eligibility for access to classified information (Answer).²

On April 21, 2016, Department Counsel indicated the Government was ready to proceed. On May 2, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for June 9, 2016.³ The hearing was convened as scheduled. Applicant testified and offered exhibits A – C. I granted Applicant's request for additional time post-hearing to supplement the record.⁴ He timely submitted exhibits D – F. All exhibits were admitted in evidence without objection. The hearing transcript (Tr.) was received by DOHA on June 20, 2016, and the record closed on July 8, 2016.

Findings of Fact

Applicant is in his early fifties. He has been married for over 25 years and has four adult children. He has lived at the same address, a home that he owns, for nearly 20 years. He has been with his current employer for nearly 15 years. He is employed as an area manager, supervising a workforce of approximately 700 individuals. The vice president of the company Applicant works for submitted a reference letter attesting to Applicant's judgment, honesty, and professionalism. Applicant has held a security clearance since 2009. (Tr. 12-15, 22, 53-54; Exhibit (Ex.) 1; Ex. E)

In 2011, Applicant's mother passed away. Applicant and his sister paid for their mother's funeral expenses. Around the same time, his wife's employer was experiencing a business downturn. Applicant's wife was told by her employer that she could keep her job, but only if she accepted a 20% reduction in salary. Unable to find another job, Applicant's wife stayed with her employer at the reduced salary. At the time, Applicant and his wife were also assisting their son pay for college. Applicant and his wife had accumulated about \$50,000 in debt between paying for his mother's funeral expenses, making needed repairs to their home, and incurring other consumer-related debt. Applicant's wife, who has a background in finance, did some research and identified a debt consolidation firm (DCF) that could assist them in paying their debts.

In July 2011, Applicant and his wife retained the DCF. The DCF consolidated their outstanding debts and established a payment plan. Over the course of the next four years, Applicant paid \$874 a month to the DCF. He satisfied all his debts through

² Sometime thereafter, Department Counsel moved to amend the SOR to correctly reflect the Guideline E concern. The the requested amendment was granted without objection. (Tr. at 6-7)

³ Prehearing correspondence, notice of hearing, and case management order are attached to the record as Hearing Exhibits (Hx.) I – III, respectively.

⁴ The record was originally kept open until June 24, 2016, but was extended at Applicant's request to July 8, 2016. Post-hearing correspondence is attached to the record as Hx. IV and V.

the DCF repayment plan. Applicant submitted documentation, to include the DCF contract, schedule of debts, and proof that all the listed debts were satisfied.⁵

Applicant and his wife currently earn a combined annual income of approximately \$150,000. They use a household budget to manage their finances. Their son recently graduated from college. Applicant submitted a current credit report that reflects his accounts are in good standing. (Tr. 15-43, 49-54; Ex. A – C; Ex. D; Ex. F)

In August 2013, two years after Applicant started resolving his debts through the DCF, he filled out and submitted a security clearance application (SCA). In response to questions regarding whether he had any derogatory financial accounts to report, Applicant answered “no.” (Ex. 1)

Applicant explained that before retaining the DCF his debts were not in collection, seriously past due, or otherwise derogatory. He was unaware at the time he submitted the SCA that some of the same accounts he was using the DCF to resolve had been turned over by the original creditor(s) to a collection agency or otherwise designated derogatory in some fashion. He was specifically advised by the DCF not to have further communication with his creditors and if they contacted him that he should refer them to the DCF. He immediately stopped using credit cards associated with accounts turned over to the DCF. Applicant credibly testified that he did not know he had any derogatory accounts that needed to be reported at the time he submitted his SCA. A month after submitting the SCA, Applicant was interviewed by a background investigator. He freely informed the investigator that he was using the DCF to resolve his debts and fully discussed his financial situation in detail. (Tr. 15-35, 48-49; Ex. 5)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting

⁵ Department Counsel conceded in his opening statement that Applicant satisfied the debts referenced in SOR 1.c and 1.d in December 2013 and June 2014, respectively; or, over a year before the SOR was issued. (Tr. 8) The remaining two SOR debts total less than \$1,800 and were also resolved.

“witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an 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.

Analysis

Guideline F, Financial Considerations

The SOR alleges that the four listed debts, totaling less than \$1,800, implicate the financial considerations security concern. The concern is explained at 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.

By 2011, Applicant had amassed a substantial amount of consumer-related debt and was financially overextended, which contributed to his precarious financial situation and arguably raises the financial considerations concern. Applicant mitigated those concerns. In mid-2011, he took proactive, prudent steps to address a looming financial crisis that was triggered by matters largely beyond his control (i.e., wife’s loss of income and mother’s funeral expenses). He consolidated his outstanding debts and resolved them with the assistance of a debt consolidation firm. He took this responsible action well before the initiation of the reinvestigation of his background. His current finances

appear good and, notwithstanding the financial hardships that befell his family in 2011, he remained in control of his finances. Accordingly, I find that Applicant established the following mitigating conditions:

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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guideline E, Personal Conduct

The personal conduct security concern is explained at AG ¶ 15:

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.

The SOR alleges that Applicant falsified the SCA when he did not list the four SOR debts on his SCA. Specifically, the SOR alleges that Applicant did not disclose these four SOR debts in response to questions asking: whether in the past seven (7) years he had any debts turned over to a collection agency or credit cards suspended, charged off, or canceled for failure to pay? This falsification allegation raises the potential applicability of the disqualifying condition listed at AG ¶ 16 (a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to determine security clearance eligibility"

The security clearance process is contingent upon the honesty of all applicants. It begins with the answers provided in the SCA and continues throughout the security clearance process. An applicant should disclose any potential derogatory information responsive to the questions asked on the SCA. However, the omission of material, adverse information standing alone is not enough to establish that an applicant

intentionally falsified his or her SCA. An omission is not deliberate if the person genuinely forgot the information requested, inadvertently overlooked or misunderstood the question, or sincerely thought the information did not need to be reported. An administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent. See *generally*, ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005).

Applicant did not intentionally falsify his SCA. He credibly testified that since he was addressing and resolving his debts through the DCF, he did not believe he had any derogatory accounts that needed to be reported. His "innocent" state of mind is corroborated by his actions just a month after submitting the SCA, when he freely volunteered information about the DCF and the troubled state of his finances. Additionally, I had an opportunity to observe Applicant's demeanor at hearing and found him credible. Accordingly, I find that AG ¶ 16(a) does not apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of all the relevant circumstances, to include the factors listed at AG ¶ 2(a). Applicant is a responsible, family-oriented individual. His employer has great confidence in his abilities and placed him in charge of managing a fairly large, disparate, and challenging workforce. When faced with a looming financial crisis in 2011, Applicant took prudent, responsible steps to address his finances. His actions are consistent with what is expected of those granted access to classified information. His explanation for not listing on his SCA his derogatory accounts or that he was using the services of a DCF was reasonable, credible, and consistent with other record evidence. After considering the record evidence, both favorable and unfavorable, I find that Applicant met his burden in establishing his eligibility for continued access to classified information.

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 (Financial Considerations)	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge