



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



In the matter of:

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ISCR Case No. 15-03739

Applicant for Security Clearance

Appearances

For Government: Carroll Connelley, Esq. Department Counsel

For Applicant: *Pro se*

11/30/2016

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) and Guideline E (Personal Conduct).¹ The SOR was dated December 12, 2015. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

¹At the beginning of the hearing, counsel moved to withdraw the Guideline E allegations. I granted the Motion to amend the SOR. Thus, there is no issue under that guideline.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on August 11, 2016. A notice of hearing, dated September 29, 2016, was issued scheduling the hearing for October 13, 2016. Government Exhibits (GX 1-4) were admitted into the record. Applicant submitted Applicant Exhibits (AX A-K). He testified, but did not present witnesses. I kept the record open for additional documents until November 13, 2016. Applicant submitted (AX L-N), which were entered into the record without objection. The transcript was received on October 20, 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 the factual allegations under Guideline F (Financial Considerations) with the exception of SOR 1.g through 1.i. He provided detailed explanations. Some of the delinquent debts were already paid, disputed, or in a payment plan.

Applicant is a 35-year-old security engineer for a defense contractor. He served in the military on active duty from 1999 to 2003, receiving an honorable discharge. He earned an associate's degree (AA) in 2006 and continues with undergraduate courses at university. He is separated from his wife and has five children.² He lived with his mother from 2003 until 2006 to save money on expenses. Applicant has worked for his current employer since 2011. He has held a security clearance since approximately 1999. (GX 1) He completed a security clearance application in 2014. (GX 1)

Financial Considerations

The SOR alleges 11 delinquent debts including judgments, collection accounts, medical accounts, and child support, which total approximately \$32,000. (GX 4) Applicant admits full responsibility for the debts in an amount of \$30,000.

Applicant was unemployed from October 2003 until September 2006. During that time, he collected unemployment in the amount of \$300 per week. He attended class during that time and found some part time work. (GX 2). However, he could not maintain all his expenses. He prioritized and paid other bills. When he was interviewed in 2014, Applicant was not aware of many of the delinquent accounts. (GX 2) He admits that he was naive and did not look at credit reports.

As to SOR 1.a, a judgment in the amount of \$1,056, Applicant presented documentation that the judgment was satisfied in March 2016. (AX J and I) As to SOR 1.b, a charged-off account in the amount of \$17,951, SOR 1.c, a collection account in the amount of \$5,613, SOR 1.d, a charged off account in the amount of \$3,352, Applicant has consolidated the three largest debts into a consolidation plan. (AX H) He has agreed to pay \$457 monthly for 42 months. (AX A) As to SOR 1.e and 1.f, child

²He only has two child support accounts.

support collection accounts in the amount of \$1,111 and \$1,380, Applicant has satisfied the debt and provided payment documentation and proven he is not in arrears. (AX D, AX E) He pays child support in the amount of \$230 monthly and \$180 monthly for the two accounts, which are directly removed from his check. (GX 2, AX F) Applicant's phone collection account in SOR 1.g in the amount of \$402, has been successfully disputed. (AX N) As to the medical debt in SOR 1.h for \$168, Applicant denies this account, but researched it and will pay it. (AX B) AS to SOR 1.i, in the amount of \$61, Applicant has successfully disputed the account. (AX L)

As to SOR 1.j, a collection account in the amount of \$200, Applicant stated that it was a parking ticket and he paid the account. (Tr.28) As to SOR 1.k, a medical account in the amount of \$1,076, Applicant stated that this account is the result of a crime victim incident. He presented extensive documentation that he was assaulted and was not liable for the medical charge. (AX K) Applicant was told that it was to be paid by the insurance company. He has contacted the hospital and the insurance company. If he owes the \$1,076, which is a co-payment, he has set up a plan to pay the amount. (AX N)

Applicant testified that some of the financial difficulty began in 2010, and he made some "silly mistakes." He stated that was due to his young age. (Tr.42). He admits that his financial situation became overwhelming. He did his best and paid other non-SOR bills. (Tr.24, AX G, AX C) He also contacted a debt consolidation company to aid and counsel him regarding his finances and his credit. (AX H) Applicant set up a payment program with them and his three largest debts, as noted above, are included in the plan. He has some student loans that he was paying that are now deferred, This will give him extra money each month to pay on his monthly payment plan. (Tr. 37)

Applicant's annual salary is \$120,000. He has a savings account. He has a budget that he uses each month and is current with his daily bills. He has a small net monthly remainder. He is current on his car payment and daily expenses.

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.

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.*

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 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 delinquent debts that are listed in the SOR. 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 the 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.

After leaving the military, Applicant was unemployed for a period of time. He lived with his mother to reduce his expenses. He went to school to improve his employment opportunities. He paid his child support obligations the best that he could. He satisfied a judgment. He paid other non-SOR debts. He became separated and is still not officially divorced. He had circumstances that caused him financial difficulty. He took care of basic expenses. He did not ignore his creditors. He obtained the services of a consolidation program. He paid some smaller debts. He was credible and candid at the hearing. He successfully disputed certain accounts. He researched debts that he was not aware of and is intent on following up on his credit. He has shown a commitment to resolving his debts. AG ¶ 20 (b), (c), (d) and (e) apply.

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 35 years old and served in the military, receiving an honorable discharge. He financially supports his children. He has been separated and is going through a divorce. He was unemployed for a period of time. He continued to go to school after receiving his AA degree, so that he could improve job opportunities. He has prioritized his debts. He takes responsibility for what he owes. He paid some smaller SOR debts, as well as some non-SOR debts. He was credible and candid that he has been addressing his delinquent debts. He has paid, resolved, settled, or made payment arrangements for non-SOR debts as well as SOR debts. He provided documentation of his payments and other evidence of payment arrangements and a release of a state lien. Applicant established that he has taken sufficient actions to reasonably and responsibly within his limited finances to resolve delinquent debts. Applicant has shown that he can responsibly manage his financial obligation. He continues to resolve other debts. He was organized at the hearing and followed up by supplementing the record with information. Overall, the record evidence leaves me without questions and doubts as to his judgment, trustworthiness, reliability, and eligibility for his security clearance. I conclude that Applicant has presented sufficient evidence of mitigation of his financial considerations security concern.

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.k: For Applicant

Paragraph 2, Guideline E: WITHDRAWN

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