



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



In the matter of:)
)
) ISCR Case: 15-04210
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

September 30, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be delinquent on two debts in the total amount of \$14,238. He has resolved the larger debt and the second, a \$186 debt, no longer appears on his credit report. His efforts to locate the creditor have been unsuccessful. Applicant has acted in good faith and future financial delinquencies are unlikely. Eligibility for access to classified information is granted.

Statement of the Case

On January 4, 2016, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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) effective September 1, 2006.

Applicant answered the SOR on February 12, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on May 23, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 25, 2016, scheduling the hearing for June 20, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection. Applicant offered Exhibit (AE) A, which was admitted without objection. Applicant testified. DOHA received the transcript of the hearing (Tr.) on July 5, 2016. The record was left open for Applicant to submit additional exhibits. Applicant presented additional exhibits marked AE B through AE D. Department Counsel had no objections to AE B through AE D and they were admitted. The record then closed.

Findings of Fact

Applicant is 57 years old. He has been employed with a Government contractor for the past 20 years. He is a naturalized U.S. citizen. He possesses a master's degree. He is married and has no children. (Tr. 18-20.)

The SOR alleged Applicant owes approximately \$14,238 on two delinquent financial obligations. In his Answer, Applicant admitted SOR ¶ 1.b and denied SOR ¶ 1.a. His debts are documented in the record credit reports dated September 24, 2014; April 16, 2015; December 4, 2015; and May 18, 2016. (GE 2; GE 3; GE 4; GE 5.) After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant was alleged in SOR ¶ 1.a to be indebted on a medical debt in the amount of \$186, based on a listing in his September 2014 credit report (GE 2). Applicant is willing and able to satisfy this debt, but is unable to locate the creditor. This debt is not listed on any of his recent credit reports. (Tr. 23; GE 3; GE 4; GE 5; AE A.)

Applicant was alleged in SOR ¶ 1.b to be indebted to a collection company for a bank in the approximate amount of \$14,052. This debt was for a delinquent credit card account. Applicant stopped paying on this debt in 2009 when his mother passed away. He attempted to negotiate with this creditor, but the bank was unwilling to accept a settlement that Applicant could afford. Applicant provided documentation from the creditor that offered to settle this account for a payment of \$6,500. On July 6, 2016, he made an electronic payment in that amount to this creditor. This debt is resolved. (AE B; Tr. 24-27.)

Applicant's credit report, dated June 20, 2016, reflects he has a "good" credit score. He has no delinquent debts identified on that credit report. (AE A.)

Applicant's supervisor and coworker, who wrote letters on Applicant's behalf, characterize him as a very hardworking, reliable, trustworthy individual, who is focused on his duties. Applicant has never committed a security violation. His performance

evaluations reflect he works well with others and is successful in achieving his goals. (AE C; AE D.)

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, 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(a) and 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

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.

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 accumulated two delinquent debts in the total amount of \$14,238. These debts established both a history of delinquencies and an inability or unwillingness to satisfy his obligations. The evidence raises security concerns under the above conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. I find the following three provide mitigation:

- (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;
- (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.

Applicant has made reasonable, good-faith efforts to resolve both of his delinquent accounts listed on the SOR. He has settled the larger of the two debts with a payment of \$6,500, and that debt is resolved. The remaining \$186 debt is no longer on his credit report, so he cannot dispute it with the credit reporting agencies. He does not know who the creditor was or how to contact the creditor. As a result, he is willing but presently unable to pay it through no fault of his own. He has reduced his overall debt, significantly. His financial problems are under control as evidenced by his current credit report, which reflects he has good credit and no delinquent accounts. His two alleged delinquencies occurred at or near the time of his mother's death, and such circumstances are unlikely to recur. His remaining small delinquent debt does not cast doubt on his current reliability, trustworthiness, or good judgment. Applicant has mitigated the Government's 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 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 acted responsibly by resolving one delinquent debt, and attempting to identify the other creditor. He was willing and financially able to resolve that delinquency. His supervisor and coworker indicate he is a valuable asset. Overall, the record evidence leaves me without doubt as to Applicant's present eligibility and suitability for a security clearance. He met his burden to mitigate the security concerns arising under the guideline for 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 and 1.b: 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.

Jennifer I. Goldstein
Administrative Judge