



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



In the matter of:

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) ISCR Case No: 15-04284
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Applicant for Security Clearance

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

06/07/2017

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the security concerns related to ten delinquent debts, totaling about \$31,000. The allegation related to his non-disclosure of those debts in his security clearance application is found in his favor. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Statement of Case

In June 2014, Applicant submitted a security clearance application (SF-86). On April 5, 2016, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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 in the DOD after September 1, 2006.

Applicant answered the SOR on May 21, 2016, and requested that his case be decided by an administrative judge on the written record. (Item 2.) On June 27, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant. He received it on July 15, 2016. The FORM notified him that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant timely responded and provided additional information that I marked as Applicant Exhibit (AE) A. He did not object to any of the Government's Items; Department Counsel did not object to AE A. All exhibits are admitted. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on April 24, 2017.

Findings of Fact

Applicant denied all allegations in SOR ¶¶ 1 and 2. He offered explanations for his denials. (Item 2.)

Applicant is 33 years old and divorced. He has three children. He served on active duty from July 2003 to March 2012. He held a security clearance while serving. He deployed for long periods during his service. He received an honorable discharge. After leaving the military, he was unemployed from April 2012 until January 2013, when he began his current position with a federal contractor. This position requires him to work overseas for several-week intervals. (Item 3.)

Applicant attributed the indebtedness alleged in the SOR to his previous marriage and former wife's inability to responsibly manage their finances, especially while he was overseas. He said he was not aware of some SOR debts because she did not inform him about them. (Item 5.)

Based on credit bureau reports (CBR) from June 2014, March 2015, and December 2015, the SOR alleged ten delinquent debts that totaled \$31,761, and became delinquent between 2013 and 2014. The status of each debt is as follows.

SOR ¶ 1.a. Applicant was not aware of this \$1,248 debt and cannot locate the creditor. He said he has called a listed phone number for the creditor and left messages, but has not received a return call. (Item 2.)

SOR ¶ 1.b. Applicant has been unable to locate the provider for this medical debt for \$921. He said he is working with a financial advisor to dispute it. (Item 2.)

SOR ¶ 1.c. Applicant has been unable to locate the creditor for this \$171 debt. He has left messages on the creditor's voicemail and has not received a response. (Item 2.)

SOR ¶ 1.d. The judgment for \$2,675 is resolved. On July 13, 2013, the court entered a Final Judgment for Possession after Applicant vacated the rental property. Applicant said he telephoned the clerk's office and was told that no payment is due from him. (Item 2.)

SOR ¶ 1.e. The \$198 cable debt was paid May 2016. (Item 2.)

SOR ¶ 1.f. The \$921 debt was resolved in May 2016. (Item 2.)

SOR ¶ 1.g. The \$23,593 medical debt was resolved in April 2016. (AE A.)

SOR ¶ 1.h. The \$63 cable debt was owed to the same creditor listed in ¶ 1.e above. Applicant said it is resolved. (Item 2.)

SOR ¶ 1.i. The \$1,407 credit card debt was paid in December 2014. (Item 2.)

SOR ¶ 1.j. The \$564 credit card debt was paid in July 2014. (Item 2.)

Applicant has resolved \$29,421 of the \$31,761 alleged debt. He has been unsuccessful in resolving \$2,340 owed to three creditors. There is no evidence that Applicant obtained credit or budget counseling. He did not submit a budget.

When he completed his June 2014 SF-86, Applicant did not disclose any of the above delinquent debts. However, at the end of Section 26, inquiring about delinquent debts or accounts, Applicant stated, "I do not have all the required information to complete this section." (Item 3.) He noted that he was trying to pay debts and disclosed the July 2013 eviction referenced above in SOR ¶ 1.d.

During a personal interview with a government investigator in December 2014 regarding information in the SF-86, Applicant stated that he did not intentionally fail to disclose information about his delinquent accounts, but said he did not have information about his delinquent debts available when he completed the SF-86. He also said he was unfamiliar with some debts and creditors. (Item 5.)

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(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. According to 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 EO 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.

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.¹

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 had been unable or unwilling to satisfy or resolve ten delinquent debts that arose between 2013 and 2014. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

- (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; and
- (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.

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

Applicant's delinquent debts arose between 2013 and 2014, many of which he attributed to his former wife's failure to manage their bills, especially when he was working overseas. Since late 2014, he has been addressing the debts and managing his finances. The circumstances that gave rise to the delinquencies are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. The evidence establishes some mitigation under AG ¶ 20(a).

Applicant's former marriage and a period of unemployment between 2012 and 2013 were circumstances beyond his control that contributed to his financial problems. However, there is insufficient evidence to establish full mitigation under AG ¶ 20(b) because he did not provide sufficient evidence that he attempted to responsibly address them while they were accumulating.

Applicant did not present evidence that he participated in financial, budgetary, or credit counseling. However, he has submitted documentation that he has resolved seven of the ten alleged debts, indicating that the financial security concerns are under control. The seven resolved debts comprise more than 92% of his SOR-alleged delinquency. AG ¶ 20(c) has application. He provided documentation that he made a good-faith effort to resolve and pay seven SOR-listed debts, and attempted to contact the remaining three creditors. Hence, AG ¶ 20(d) has some application. Applicant did not provide evidence that he had a reasonable basis to dispute any delinquent debt. AG ¶ 20(e) has no application.

Guideline E, Personal Conduct

The security concern pertaining to this guideline is set out in 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 government alleged in SOR ¶ 2.a that Applicant falsified his answers to a financial question on his SF-86, because he failed to disclose delinquent debts. The government contended that his omissions may raise a security concern and be disqualifying under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied that he intentionally omitted information about his delinquent debts. When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

In response to specific questions in the SF-86 about whether he had delinquent debts or accounts, Applicant answered "no." However, he informed the government that he did not have the necessary information available to answer those questions. He noted that he was attempting to pay debts, and mentioned the July 2013 eviction. During a subsequent interview, he stated that he did not attempt to mislead the government, but did not have the financial documents he needed to answer the questions and was unaware of some debts. Based on his explanation in the SF-86 and to the government investigator, I find that his omission of the information was possibly negligent, but not intentional. Hence, the evidence does not establish deliberate falsification and a discussion of potential mitigating conditions is not pertinent.

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 33 years old. He honorably served in the military for nine years, and held a security clearance. He deployed during his service. He began working for a federal contractor in 2013. Between 2013 and 2014, he accumulated over \$31,000 of delinquent debts, the

majority of which involved medical debt. He has resolved over \$29,000 of that debt, and said he left messages for the remaining three creditors, in an attempt to resolve the remaining \$2,000. He also is aware that financial responsibility is an important component of federal employment. The falsification allegation is found in his favor. The potential for pressure, coercion, or duress related to alleged delinquent debts is minimal. Overall, the record evidence leaves me without doubts as to Applicant's eligibility and suitability for a security clearance. He supplied sufficient evidence to meet his burden to mitigate the security concerns arising under the guidelines for financial considerations and personal conduct.

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.j:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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