



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



In the matter of:

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) ISCR Case No. 15-05084
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Applicant for Security Clearance

Appearances

For Government: Charles Hale, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

02/17/2017

Decision

LYNCH, Noreen A., Administrative Judge:

On January 27, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on June 29, 2016. A notice of hearing, dated October 4, 2016 was issued, scheduling the case for December 13, 2016. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified, presented a witness, and submitted Applicant Exhibits (AX) A-R, which were admitted without objection. I kept the record open until January 10, 2017 for additional submissions, and Applicant submitted documents, which were marked as AX S-W, and admitted into the record without objection. The transcript was received on

December 21, 2017. 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 denied seven SOR allegations and admitted the remaining SOR allegations under Guideline F, with explanations.¹

Applicant is 40 years old. He is single and has two children, for whom he provides support. He works as a network senior specialist, and has been with his current employer since 2010. Applicant has held a security clearance since 1997. (GX 1) He has worked as a contractor since 2002, with the exception of a period of unemployment in March 2009 to January 2010; January 2006 to August 2006; and January 2003 to July 2004. (GX 2) He completed a security clearance application on September 2014. (GX 1) He disclosed his financial issues on that application.

Applicant graduated from high school in 1995, and attended university classes part time. (GX 2) He obtained student loans from 1995 to 2000. In 1999, his mother suffered her first stroke and Applicant moved to his mother's home to help care for her. He now provides for her daily expenses. (Tr. 27) This situation created financial difficulties for him as he could not pay her bills and maintain his own at the same time. At one point he considered bankruptcy, but did not want to take that option. (Tr. 143)

The SOR alleges delinquent debts, including a 2009 judgment, nine student loans that are past-due, three collection accounts, a 2006 tax lien and unpaid federal taxes for the tax years 2008, 2009 and 2010. Applicant admits that he owes some collection accounts, but he disputes others. His student loans (SOR 1.b-1.g) have been consolidated and are current.

Applicant explained that the cause of the financial difficulties is a combination of various periods of unemployment in the years mentioned above and March 2009 until January 2010, and caring for his ill mother. (Tr. 47) His mother had another stroke in 2012, and had to retire. Applicant is responsible for her care. (Tr.71)

As to the SOR allegation in 1.a, Applicant provided documentation that the 2009 judgment in the amount of \$644 was satisfied in 2014. (AX F) This debt stemmed from an auto accident in a parking lot. Applicant stated that he did not have insurance and could not pay the other driver. At first, he disputed that he owed anything regarding this claim. (Answer to SOR).

Applicant had a 2006 state tax lien (SOR 1.b) for \$588, which was satisfied in 2014. (AX K)

¹In his answer to the SOR, Applicant denied seven debts or disputed them, but at the hearing he had more information to present.

As to SOR allegation 1.c, a charged-off account in the amount of \$11,115, Applicant provided a 1099-C from 2014, which shows a cancellation of the debt. (AX O) In his answer, he reported that he tried to negotiate a settlement, but did not have the requisite amount of money to do so. This was the result of a vehicle repossession.

Applicant's collection accounts for student loans, 1.d, 1.e, 1.f, and 1.g for a total amount of \$20,229 have been consolidated. (AX M) The collection accounts for student loans 1.j, 1.k, 1.l, and 1.m are duplicate accounts. Before the consolidation, Applicant was making payments to the Department of Education. He began the payments in 2010. (Tr. 39)

As to SOR allegation 1.h in the amount of \$617, for an account that was charged off, Applicant has disputed the debt. It does not belong to him. He presented a letter of favorable dispute and claims that the account is no longer on his credit report. (Tr. 41; AX N) Applicant disputed the SOR allegation 1.i to the same company in the amount of \$342.

As to the collection account in an amount of \$1,599, for SOR allegation 1.o, to a state university, Applicant denied the debt. He challenged it and the debt was removed from his credit report. (AX I, J)

As to SOR allegation 1.p, in an amount of \$210, Applicant disputed the debt and it does not appear on his credit report. (Tr. 44) This account was from an insurance company, which he stated he still uses. (Tr.)

As to the SOR allegation 1.q in the amount of \$11,585 for unpaid federal taxes for tax years 2008, 2009, and 2010, Applicant has been in a repayment plan with the IRS since 2010. (AX K); L, M, N) He initially paid \$300 a month and it has been reduced to \$240 a month. The balance is now \$3,677. (AX R) The money is directly debited from his account to the IRS. (AX S-V) Applicant's federal taxes were filed late due to unemployment and misunderstandings about previous tax years.

Applicant's current position is stable with good health benefits and opportunity for growth and promotion. Applicant's annual salary is \$67,000. Applicant is current with all his expenses. He believes he has about \$760 net monthly remainder. He uses a budget (AX D) and obtained financial counseling in 2016. (AX C) Applicant has a 401(k) account. (Tr. 95)

A contractor manager, who has known Applicant since 2011, testified that Applicant performs well and is rated as "significantly achieves." (Tr. 18) The manager testified that Applicant is a valuable member of the team and is trustworthy. The witness is aware of the financial security concerns. He recommends Applicant for a security clearance. He learned about the 2012 security violation when Applicant had to leave due to an illness for a relative.

Applicant presented a letter of recommendation from a colleague who he has known for 20 years. She described Applicant as humble, dedicated, and reliable. He

earns the respect and trust of others on the job. Furthermore, he is generous with his time and resources to those in need. He is a spiritual family man. (AX A)

He also presented a letter of recommendation from a former military intelligence analyst who has known him for six years. He described Applicant as a person who makes sound financial decisions and lives within his means. Applicant has been entrusted with classified documents. (AX A)

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.

The U.S. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ 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.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted he owed some delinquent debts and incurred judgments, student loans, and tax liens. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant’s, Financial Considerations Mitigating Condition (FC MC) 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) partially applies. Applicant still has payment plans and loan consolidations that are recent.

⁵ See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially applies. As noted above, Applicant's financial difficulties are a combination of several things. He was unemployed on several occasions, and he also had an ill mother who he cared for and provided financial assistance. He made arrangements to pay his federal taxes and his student loans. He disputed some items and was successful. This mitigating condition applies.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant took steps to consolidate his student loans, and provide for his children. Since 2010, he has been in a repayment plan with the IRS. Some accounts he has successfully disputed. He now has steady employment with a company that will provide him with benefits and opportunity for growth and promotion. FC MC 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) partially applies. He has shown a track record with the repayment plan to the IRS and the consolidation of student loans.

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 40 years old. He is an employee of a federal contractor. Applicant has held a security clearance since 1997. Applicant acknowledged that he had a security violation in 2012, due to leaving early when he learned that a relative was ill and needed him. His witness also knew about the situation. Applicant has experienced

unemployment on various occasions. He helps his ill mother. He fell behind on his bills and has shown that is attempting to repair his credit. He has a track record with the largest of the alleged accounts. He received a cancellation of debt and provided proof on another large debt. He has good recommendations. He wanted to improve his job skills and continue his education beyond high school. He acquired student loans. He does not deny that he had financial issues with his taxes. He has a budget and obtained financial counseling. He has a steady position earning \$67,000 a year. He now follows a budget and saves when he can.

Applicant has shown that he has mitigated the Government's case concerning security concerns under the financial considerations guideline. He met his burden of proof.

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.q:	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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge