



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-05462

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel

For Applicant: *Pro se*

03/27/2017

Decision

DAM, Shari, Administrative Judge:

Applicant resolved the two alleged delinquent debts. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Statement of Case

On November 7, 2014, Applicant submitted a security clearance application (SCA). On February 12, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 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 within the DOD after September 1, 2006.

Applicant answered the SOR on March 8, 2016 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On June 17, 2016, Department Counsel prepared the Government's written

case. The Defense Office of Hearings and Appeals (DOHA) mailed a complete copy of the File of Relevant Material (FORM), containing seven Items, to Applicant on June 20, 2016. He received it on June 28, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant timely submitted two exhibits that I marked as Applicant Exhibits (AE) A and B, and admitted without objection from Department Counsel. Applicant did not file any objections to the Government's FORM; hence, all seven Items are admitted. DOHA assigned the case to me on March 2, 2017.

Findings of Fact

Applicant admitted both allegations contained in Paragraph 1 of the SOR and provided evidence that they were paid. (Item 3.)

Applicant is 39 years old and unmarried. He graduated from high school in 1995. He has worked for a federal contractor since January 2014. He was unemployed from March 2007 until December 2007, and from March 2013 until December 2013. (Item 3.)

Applicant disclosed two previous financial issues in his November 2014 SCA: a \$9,586 federal tax lien that was entered in 2009 and paid in 2011; and a \$6,000 civil action that was initiated in April 2012 for an unpaid credit card, and was resolved in May 2012 with a \$6,000 payment.¹ (Item 3.) Applicant explained that he and his parents used the same accountant to prepare their tax returns. The accountant miscalculated both of their taxes, which resulted in federal liens being filed against them. He no longer uses that accountant, and has not had additional tax problems. (Item 4; AE A.) Applicant said the credit card account became delinquent in 2009, at which time he did not have sufficient money to pay it. (Item 4.)

Applicant attributed his financial problems to long layoffs in 2007 and 2013. In addition, he helped care for his parents after his father had a heart attack in 2007 and was unable to work. When Applicant obtained employment in December 2007, he earned about \$14 per hour, which was insufficient to cover his bills. After a nine-month layoff in 2013, Applicant returned to work part-time in January 2014, which continued to cause some monetary problems. Applicant acknowledged that his prior financial immaturity and poor decisions also contributed to his financial issues. (Item 3; AE A.)

Based on credit bureau reports (CBRs) from 2014 and 2015, the SOR alleged two delinquent debts; one became delinquent in 2008 and the other in 2009. They totaled \$28,560. (Items 5 and 6.) Both debts are resolved.

1. The SOR did not allege the federal tax lien or delinquent credit card as security concerns. Those facts will not be analyzed as potential disqualifying conditions, but may be considered under the analysis of mitigating conditions, the whole-person concept, and Applicant's credibility.

SOR ¶ 1.a was a \$223 unpaid credit card debt owed to bank. Applicant paid it on February 26, 2016. (Answer.)

SOR ¶ 1.b was a \$28,337 unpaid credit card debt. Applicant settled it for \$8,501 and paid it on March 4, 2016. (Answer.)

Applicant did not submit a budget or provide evidence that he participated in credit counseling. He stated that his current financial situation “is good,” and that he has a decent credit score. (AE A.) A most recent CBR from June 2016 indicated that he has a balance of \$21,696 on seven revolving credit accounts, all of which are in good status. The CBR did not list any delinquent accounts. (Item 7.)

Applicant’s supervisor submitted a letter of recommendation. The supervisor has known Applicant since 2014 when Applicant began his employment. The supervisor stated that Applicant is a “responsible, trustworthy employee.” (AE B.) He said that customers comment positively on Applicant’s work. (AE B.)

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(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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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.”

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.²

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.

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant accumulated two delinquent accounts totaling over \$28,000 in 2007 and 2009, which he did not resolve until 2016. That history and inability or unwillingness to pay lawful debts, raise security concerns under the above disqualifying conditions, and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

(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; and

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

There is insufficient evidence to establish mitigation under AG ¶ 20(a) because Applicant did not resolve the two old delinquent debts until 2016. There is some evidence that Applicant's financial problems were attributable to long periods of unemployment and under-employment, and caring for his father in 2007. Those were circumstances beyond his control. However, Applicant acknowledged that his previous financial immaturity and poor decisions also contributed to the problems, which were circumstances within his control. Hence, AG ¶ 20(b) applies minimally.

Applicant established some mitigation under AG ¶ 20(c). He did not submit evidence of financial counseling or a solid budget, but a recent CBR indicates that his financial problems are under control. Applicant demonstrated some good-faith effort to resolve the debts and establish mitigation under AG ¶ 20(d). He submitted evidence that he paid and resolved both SOR-alleged debts within a month of receiving the SOR.

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 a mature adult, who takes full responsibility for his financial matters. He honestly acknowledged his past mistakes and lack of financial judgment. He is aware that future financial problems may jeopardize his employment. At this time, the potential for pressure, coercion, and duress related to Applicant's two delinquent debts is diminished. Overall, the record evidence leaves me without doubts as to Applicant's present eligibility and suitability for a security clearance. He met his burden to mitigate the security concerns arising from 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.

SHARI DAM
Administrative Judge