



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



In the matter of:

ISCR Case No. 15-06023

Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Jeffrey Moriarty, Esq.

February 3, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant incurred excessive credit card debt when he used his personal credit cards to cover unreimbursed business travel expenses. His alleged debt has been resolved either through payment or cancellation. He no longer travels in his new job. He uses cash for all of his expenses. His financial problems occurred under circumstances that are unlikely to recur. His past behavior does not cast doubt on his current reliability, trustworthiness, or good judgment. Eligibility for access to classified information is granted.

Statement of the Case

On July 25, 2014, Applicant submitted a security clearance application (e-QIP). On April 16, 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 May 24, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on August 17, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 24, 2016, scheduling the hearing for September 22, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 3, which were admitted without objection. Applicant offered Exhibits (AE) A through O, which were admitted without objection. Applicant testified on his own behalf. The record then closed. DOHA received the transcript of the hearing (Tr.) on October 5, 2016.

Findings of Fact

Applicant is 63 years old. He has been employed with a Government contractor for one year. He has held a security clearance since 2009, in conjunction with his previous employment with another government contractor. He is not married and has no children. (GE 1; Tr. 19-22, 75.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR identified three debts totaling approximately \$31,588. Applicant denied all of the allegations, explaining that these previous obligations had all been satisfactorily resolved. (Tr. 7.) The alleged debts were listed on credit reports dated August 1, 2014, and July 28, 2016. (Answer; GE 2; GE 3.)

Applicant accepted full responsibility for his past financial difficulties. He explained that he traveled extensively for work from 2008 through 2010. He was away from home for up to four months at a time. His firm did not have corporate credit cards and Applicant was required to use his own credit cards and then submit receipts for reimbursements. He lost receipts and mismanaged his finances during that time. When he realized the depths of his financial obligations, he immediately called his credit card companies and closed the accounts to stop the interest from continuing to accrue. He attempted to negotiate payment plans with each of his creditors. His mortgage, which was past due, is now current. Additionally, he settled four unalleged accounts for less than full payment after he negotiated with those creditors. (AE D; Tr. 34-44, 50-54, 63.) His debts identified on the SOR are as follows:

Applicant was alleged to be indebted to a bank for a credit card account placed for collection in the amount of \$19,288. Applicant testified he attempted to negotiate with this creditor, but the creditor was not willing to accept monthly payments. He received a 1099C from this creditor for tax year 2012 cancelling this debt. He included this transaction in his income tax filing for 2012, and paid the resulting taxes. It is resolved. (GE 2; GE 3; AE A; AE D; AE G; Tr. 23-29, 70.)

Applicant was alleged to be indebted to a bank on a charged off credit card account in the amount of \$8,815. He resolved this debt on April 29, 2016, after making monthly payments to this creditor. The debt was paid in full. (GE 2; GE 3; AE B; AE D; Tr. 29-30, 66-67.)

Applicant was alleged to be indebted to a bank for a credit card account placed for collection in the amount of \$3,485. Applicant testified he attempted to negotiate with this creditor, but the creditor was not willing to accept monthly payments. He received a 1099C for tax year 2013 from this creditor, cancelling the principal debt in the amount of \$2,991.22. He included this transaction in his income tax filing for 2013, and paid the resulting taxes. This debt is resolved. (GE 2; GE 3; AE C; AE D; Tr. 31-33, 70.)

Applicant testified that his new job no longer requires him to travel. He is embarrassed about his past financial problems and has pledged not to utilize credit cards in the future. He pays for all purchases with cash or the debit card connected to his checking account. He is current with his mortgage and all other accounts. He is engaging financial planners to help him prepare for retirement. He lives frugally and his 2016 personal financial statement shows that he now has \$708 left over after he meets his monthly obligations. (AE E; AE F; AE G; AE H; AE I; AE J; AE K; AE L; Tr. 37-41, 44, 46-47, 49, 73.)

Applicant is respected by those that know him personally and professionally. He presented five reference letters, which indicated Applicant is an outstanding performer, a man of great integrity, and extremely dedicated to his job. (AE M.) Applicant's direct supervisor wrote:

I was not aware of any past financial issues until he requested this letter. While informing me of his current state of obtaining a U.S. security clearance, I asked him a series of questions to better understand the situation. He did not hesitate in answering them, in my mind truthfully. He again demonstrated his ability to take ownership of his mistakes and his truthfulness. His action during my enquiry reaffirmed my earlier opinion of his truthfulness. (AE M.)

Applicant's performance appraisals from 2003, 2006, and 2007 reflect he was a valued employee. (AE N.) He has achieved technical proficiency accolades from his employers over his career. (AE O; AE P.)

Policies

When evaluating an applicant's suitability for a security clearance, the 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, 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2(a) 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 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, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters 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 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.

Section 7 of EO 10865 provides that adverse 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

From 2008 to 2010 Applicant accumulated a significant amount of delinquent credit card debt. His actions demonstrated both a history of not addressing his debt and an inability to do so. The evidence is sufficient to raise the above disqualifying conditions.

Three Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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.

The evidence shows that Applicant's credit card debts were resolved either through payment or cancellation. He no longer is legally liable for any of the debts alleged on the SOR. These debts were incurred when he was traveling extensively for work. He admittedly did not keep track of his receipts or finances during that period, which caused his excessive indebtedness. However, when he realized the depth of his financial problems in 2010, he closed all of his credit card accounts and began negotiating with the creditors. Over the following years, he resolved several unalleged credit card accounts. Two of his SOR-alleged creditors were not willing to accept monthly payments and chose to cancel the debts, despite his attempts to negotiate with them. His most recent credit report reflects that all of his other accounts are in good standing. He is now more financially savvy and is saving for his future. He has a new job, a positive monthly remainder, and is not required to travel for work. His behavior happened so long ago, and occurred under such circumstances, that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a), 20(c), and 20(d) provide mitigation.

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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant exercised questionable judgment in the past when he incurred large balances on his credit cards but failed to obtain reimbursement for the underlying business travel expenses. However, his debts are resolved, and Applicant has learned a valuable lesson. He now limits purchases to the cash on hand and does not travel for work. He is unlikely to find himself in this situation again. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated Financial Considerations security concerns.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge