



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07003

Appearances

For Government: Pamela C. Benson, Esquire, Department

Counsel For Applicant: -----, Personal Representative

06/23/2017

Decision

HOWE, Philip S., Administrative Judge:

On December 16, 2014, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On April 8, 2016, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The action was taken under Executive Order 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.¹

Applicant answered the SOR in writing on June 21, 2016, and requested a decision be made on the written record. A hearing before an administrative judge was later requested by Applicant on an unspecified date. Defense Office of Hearings and Appeals (DOHA) received the request on July 13, 2016. Department Counsel was prepared to

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines.

proceed on August 31, 2016, and I received the case assignment on September 19, 2016. DOHA issued a Notice of Hearing on February 27, 2017, and I convened the hearing as scheduled on March 17, 2017. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified and submitted Exhibits A through C, without objection. DOHA received the transcript of the hearing (Tr.) on March 31, 2017. I granted Applicant's request to keep the record open until April 15, 2017, to submit additional matters. On April 14, 2017, he submitted Exhibit D, without objection. The record closed on April 15, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Subparagraphs 1.a through 1.f, 1.h, and 1.k to 1.n of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.g, 1.i, and 1.j of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 51 years old, divorced, and has three adult children. He has completed three years of college study. He works for a defense contractor as a staff accountant. He earns \$56,000 annually in his job. Applicant has worked for his current employer since November 2005. (Tr. 18, 19, 21, 26, 58; Exhibits 1-5)

Applicant has 14 delinquent debts listed in the SOR. They total \$65,665. The debts include five medical bills for treatments starting in 2012 when he was hospitalized with an illness, a tax debt, two cable television service debts, a repossessed automobile loan, an education debt, an auto insurance debt, and several other unpaid financial obligations. (Tr. 22-65; Exhibits 2-5, A-D)

Applicant owed \$1,036 to a medical provider for a hospitalization he had in 2012 (Subparagraph 1.a). This amount was unpaid at the time of the hearing, but in April 2017 Applicant paid this debt. It is resolved. (Tr. 33; Exhibits 2-5, D)

Applicant owed an apartment landlord \$456 on a lease (Subparagraph 1.b). At the hearing the debt was unpaid, but in April 2017 Applicant paid the debt. It is resolved. (Tr. 35; Exhibits 2-5, C, D)

Applicant has not paid the remaining four medical debts listed in the SOR. They are for \$181 (Subparagraph 1.c), \$130 (Subparagraph 1.d), \$83 (Subparagraph 1.e), and \$62 (Subparagraph 1.f). These debts are unresolved. (Tr. 36, 37; Exhibits 2-5, A-D)

Applicant disputes the cable television debt for \$61 because he has that company's service now (Subparagraph 1.g). The company told him he owed money when he sought the installation of their service in his present residence and he claims he paid it in November 2013. The debt arose in 2011. This debt appears on the credit report of August

2015 but no other credit report marked as an exhibit. Applicant testified he could provide a statement showing the account was paid but did not do so. This debt is in dispute and it is not clear that it is resolved in any manner. (Tr. 37, 38; Exhibits 2-5, C, D)

Applicant owes a bank \$7,456 on an auto loan (Subparagraph 1.h). This car was repossessed in October 2012 after Applicant stopped paying on the loan. He testified he defaulted on his student loans and worked to rehabilitate it. He used the money he could have paid on the car for the student loan. The car loan was then delinquent. The bank charged off the auto loan and sent Applicant an Internal Revenue Service (IRS) Form 1099-C (Cancellation of Debt form) for the tax year 2016 in the amount of \$5,811.16. This debt is resolved by this method. Applicant does not now own a car because he cannot afford to do so. He uses public transportation. (Tr. 38, 39; Exhibits 2-5, B, C)

Applicant worked for a mortgage broker from 2002 until he resigned from that company in 2004. The business was failing. Applicant was the accountant and comptroller of the company. He filed the payroll tax documents quarterly in 2002 and 2003, but the business owner did not provide the funds with which to pay the taxes. Applicant was notified in May 2005 by the IRS that he was being held responsible for the unpaid taxes. The IRS garnished his wages in 2006 to pay the \$54,208.07 tax liability (Subparagraph 1.i). It filed a lien against Applicant. Applicant retained an attorney and had the garnishment lifted in return for an installment payment agreement of \$300 monthly to the IRS. Applicant paid that amount for about 84 months, totaling \$25,200. He then submitted an offer in compromise to the IRS to pay another \$16,115. He took out a loan from his Section 401(k) retirement account of \$8,000 to pay that compromise amount. The monthly repayment is \$172 for another 18 months. The balance owed he received from his personal representative as a personal gift. That amount was accepted by the IRS and a release issued. Applicant no longer owes this debt. It is resolved. (Tr. 24-30, 50, 56, 57; Exhibits 1-5, A, B)

Applicant filed his 2014 Federal income tax return but could not pay the \$400 owed. It was added to the lien amount by the IRS for his former employer's payroll taxes. Applicant's tax refunds were withheld from him to pay this debt. Now his state and Federal taxes are up to date and paid. (Tr. 30)

Applicant has a judgment against him by a university from 2008 for \$715 (Subparagraph 1.j). He denied that debt. He claims he paid it in 2008 when the school threatened to garnish his wages. This judgment debt appears on the December 2014 credit report as unpaid, but not on any subsequent credit report. Based on the totality of the evidence, this debt is resolved. (Tr. 39, 40; Exhibits 2-5, C)

Applicant owes \$933 on a medical debt (Subparagraph 1.k). Applicant admits it is unpaid. It appears on the December 2014 credit report but no subsequent credit reports. It dates from 2012, the time Applicant was hospitalized. This debt is not resolved. (Tr. 40, 41; Exhibits 2-5, C)

Applicant owes \$194 on another television service provider (Subparagraph 1.l). This debt was unpaid at the time of the hearing. Applicant submitted an exhibit after the hearing showing he paid \$193.52 on April 14, 2017. This debt is resolved. (Tr. 41, 42; Exhibits 2-5, C, D)

Applicant owes an auto insurance company \$100 for insurance on his repossessed automobile (Subparagraph 1.m). This debt is unpaid. He has not contacted the creditor. (Tr. 42, 43; Exhibits 2-5, C)

The final SOR debt is for \$50 on a medical debt dating from 2008 (Subparagraph 1.n). This debt is unpaid. (Tr. 43; Exhibits 2-5, C)

On Applicant's March 12, 2017, credit report there are four new medical debts of \$1,036, \$72, \$63, and \$66. Applicant testified they are new bills for medical treatment. The debt for \$1,036 dates from 2012, and the remaining three from January 2015, January 2016, and April 2016. He claimed there was a problem with his insurance and these bills had to go unpaid. Applicant admitted they had to be paid with the other medical debts. These debts are not listed in the SOR. (Tr. 43, 44; Exhibit 5)

There are eight unpaid delinquent debts that Applicant owes, including the cable television debt of \$61 (Subparagraphs 1.c-1.g, 1.k, 1.m, and 1.n). These debts total \$1,600. Applicant testified his net take-home pay each month is \$2,700. After monthly expenses he admitted he has about \$500 remaining that he puts into a savings account. He has \$1,300 in that account. Applicant has one credit card with a balance of \$3,300 and pays the minimum amount of \$120 monthly on that card. Applicant stated his debt now is about \$74,000 of student loans, beside the Section 401(k) loan of \$9,000. Applicant has a 30-year repayment plan for his student loans that were in deferment from 1999 to 2007 when he was in college. He pays \$215 monthly since 2014. In 2013 his income was garnished to repay his student loans, then they were put in rehabilitation status after he made an arrangement with the collector. Then he had a forbearance until 2012. Applicant testified he has not paid the small medical debts because for the past year he has focused on building a positive cash flow in his personal finances and putting money into a savings account. (Tr. 44-53, 58, 60)

Applicant's personal representative, who also is his employer, stated Applicant is an excellent employee who has worked to resolve his debts. (Tr. 62-64)

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 useful 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 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility 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, 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 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 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.

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." 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 relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Four conditions are applicable to the facts found in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant accumulated \$65,665 in delinquent debt from 2008 to the present time. Applicant has 14 delinquent debts listed in the SOR. The evidence raises all of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Five conditions may be applicable:

- (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, clear victimization by predatory lending practices, or identity theft), 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 and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with these arrangements.

Applicant was involved in a difficult and expensive payroll tax situation. He filed the proper forms with the IRS for the company for which he worked from 2012 to 2014. His employer would not pay the tax money to the IRS. Because he signed the tax reports, the IRS held Applicant liable for the taxes due. Applicant paid the substantial tax debt over 84 months and then borrowed from his retirement account, added to by a gift from his current employer, to resolve the balance owed in an offer and compromise. These tax matters were beyond his control and he acted responsibly in the situation. AG ¶ 20(b) is established.

Applicant paid six debts in an orderly manner by April 15, 2017. Therefore, there are clear indications from the evidence he presented that the larger financial problems are under control and being resolved. AG ¶ 20(c) has partial application.

Applicant has eight remaining delinquent debts unpaid totaling \$1,600. He resolved six debts listed in the SOR totaling \$64,065. He saves \$500 monthly and now has about \$1,300 in his savings account. Applicant has the financial resources to pay the unpaid debts now. He testified he is trying to build a savings account to avoid future problems. He stated he could pay some small medical debts after the hearing and he did make payments on two debts, those listed in Subparagraphs 1.a and 1.b. Applicant intends to pay the remaining debts as he saves money. Mitigation under Guideline F does not require payment of all debts. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time.² Here, his resolution of six large debts with his limited income, together with his promise to continue to resolve his delinquencies provides such concomitant conduct. AG ¶ 20(d) applies because of Applicant's good-faith efforts to repay his delinquent debts.

² ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008).

Applicant claims he paid one debt for \$61 to regain his cable television service. He stated he has that service now and when informed by the company he owed a balance he paid it. He disputes he owes it, but did not submit proof of any payment, although he was afforded the opportunity to do so. AG ¶ 20(e) applies minimally to that one debt.

Applicant paid about \$41,000 to the IRS to resolve a payroll tax debt from his former employer's actions between 2012 and 2014. AG ¶ 20(g) is established because Applicant made arrangements with the IRS to pay the amount owed and is in compliance with these arrangements.

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(d):

(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.

AG ¶ 2(b) requires each case must be judged on its own merits. 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 the facts and circumstances surrounding this case. Applicant fell into a unique situation with the payroll tax problem from his former employer. But for that drain on his finances, he would have had the funds with which to pay the remaining debts listed in his SOR. Four of the debts are under \$100 each and could be paid within two months. The remaining debts of \$100, \$130, \$181, and \$933 could be paid within the year. He does not own a car and has a regular savings plan to prevent a repeat of the financial trap in which he was caught. He pays his student loans regularly at the rate of \$215 monthly, though the SOR does not allege they are delinquent. His actions show he is capable of making regular debt payments. His current employer thinks highly of him and is aware of the debts. He recommends Applicant for a security clearance.

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 mitigated the security concerns arising from his 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

Subparagraph 1.a to 1.n: 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.

PHILIP S. HOWE
Administrative Judge