



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



In the matter of:

Applicant for Security Clearance

)
)
) ISCR Case No. 15-07583
)
)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel

For Applicant: *Pro se*

04/25/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant rebutted the falsification allegation under Guideline E, personal conduct, and has mitigated the security concerns under Guideline F, financial considerations by demonstrating that his delinquent debts are paid or being resolved. Applicant's eligibility for access to classified information is granted.

Statement of the Case

On May 2, 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on May 24, 2016, provided supporting documentation and elected to have his case decided on the written record in lieu of a hearing. On June 22, 2016, Department Counsel submitted the Government's file of relevant material (FORM), along with documents identified as Items 1 through 7. Applicant received the FORM on July 7, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted a response on July 14, 2016, with documentation. He did not object to the Government's evidence. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 7 are admitted into evidence without objection. Applicant's FORM response and the attachments provided with it are marked as Applicant's Exhibits (AE) A through F and are admitted into evidence without objection. The case was assigned to me on April 10, 2017.

Findings of Fact

Applicant admitted all four Guideline F allegations in the SOR, with explanations and some documents. I construe his answer and explanation as to the Guideline E allegation as a denial. I have incorporated his answers and relevant comments into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 40 years old. He was married to his first wife from 1995 to 2006. He remarried in 2009. He and his first wife had two children, now 11 and 20 years old. He and his second wife had a child in 2011.¹

Applicant served in the U.S. Navy from 1994 to 2014. He retired as an E-6.² When he retired, he began working for a defense contractor as an aircraft mechanic. He has had a security clearance since 2004.³

The SOR concerns four delinquent accounts totaling \$11,702. They are found on Applicant's credit reports from January 2015 and September 2015.⁴ The current status of the debts is as follows:

SOR ¶ 1.a is an \$11,187 debt in collection to a credit union. Applicant and his first wife took out the loan in about 2000 to pay for household furniture. His wife kept the furniture after they divorced. Applicant fell behind on payments after the divorce. Credit reports from June and July 2016 reflect that Applicant is paying off the account under a payment plan.⁵ SOR ¶ 1.d is a previously charged-off debt to the same credit union,

¹ Item 2.

² Items 5, 6.

³ Item 2.

⁴ Items 5, 6.

⁵ Item 7; AE F.

concerning an auto loan. The Government's evidence reflects that the account has a zero balance. The account has now been paid and the debt resolved.⁶

SOR ¶ 1.b is a past due phone bill for \$123. SOR ¶ 1.c is a past due energy bill for \$392. Both have been paid.⁷

Applicant completed a security clearance application (SCA) in January 2015. He did not disclose any of his delinquent debts in response to questions calling for disclosure of any delinquencies within the last seven years. Applicant believed that since his debts first became delinquent 10 years ago, he did not have to disclose them.⁸

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 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 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 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

⁶ Item 7; AE B, C, F.

⁷ Item 7; Answer; AE D, AE E.

⁸ Item 2; Answer; AE A.

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 that an 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 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 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.⁹

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

⁹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's delinquent debts are established by the record. There is sufficient evidence to support the application of disqualifying conditions AG ¶¶ 19(a) and 19(c).

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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;

(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.

Applicant's financial difficulties arose after his divorce. He has shown that he has undertaken responsible action to resolve his SOR debts, and he has provided documentation that they all have now been or are being paid. AG ¶¶ 20(b) and 20(d) both apply.

Applicant's credit reports establish that his finances have improved. His delinquent debts are under control and being resolved. They are unlikely to recur and no longer cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(c) apply.

Guideline E

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 did not disclose his delinquent debts on his SCA. However, his explanation is sufficient to rebut the allegation of deliberate falsification. Applicant did not intentionally provide false information on his SF 86. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under these guidelines, but some warrant additional comment.

Applicant is a 40-year-old Navy veteran. He accrued some delinquent debts after his divorce. He did not deliberately falsify his SCA concerning his finances. He provided corroborating documentary evidence that his debts have been or are being paid. He has a reliable financial track record. His finances are no longer a security concern. He has met his burden of persuasion. 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 rebutted the Guideline E, personal conduct security concern and has mitigated the security concerns arising under Guideline F, financial considerations.

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.d: 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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge