



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06349

Appearances

For Government: Daniel Crowley, Esq., Department Counsel

For Applicant: *Pro se*

05/25/2017

Decision

DAM, Shari, Administrative Judge:

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

Statement of Case

On January 26, 2015, Applicant submitted a security clearance application (SCA). On March 21, 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 (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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on April 15, 2016 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On May 9, 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 six Items, to Applicant on May 12, 2016. He received it on May 17, 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 he marked as Items A and B. I marked his accompanying letter as Item C. Applicant did not object to the Government's FORM. All Items are admitted. DOHA assigned the case to me on March 6, 2017.

Findings of Fact

Applicant admitted the allegation in SOR ¶ 1.c, and denied the allegations in 1.a, 1.b, 1.d, and 1.e, because he stated they were resolved. (Item 2.)

Applicant is 33 years old and married. He has worked for a federal contractor since April 2004. (Items 3, 5.) As of June 16, 2016, he was promoted from his previous position. (Item C.) Applicant disclosed some delinquent debts in his January 2015 SCA. (Item 3.)

Based on credit bureau reports (CBRs) from February 2015 and April 2016, the SOR alleged five delinquent debts, which totaled about \$10,300. (Items 4, 6.) The status of each debt is as follows:

SOR ¶ 1.a was a \$480 unpaid cell phone debt from January 2015. Applicant paid it in April 2016. (Answer: 1.a.) It is resolved.

SOR ¶ 1.b was a \$56 unpaid utility debt from December 2014. Applicant paid it in April 2016. (Answer: 1.b.) It is resolved.

SOR ¶ 1.c is an automobile repossession debt of \$9,606. Applicant's last payment on the debt was in 2009. During a background interview, he stated that he was unable to pay the loan because he had assumed too much debt at the time. He said he had contacted the creditor about the matter, but had not received a response. He was willing to resolve the debt. In his response to the FORM, he reiterated that he had called the creditor repeatedly to resolve the debt. The company told him the file was archived, and he no longer had a financial responsibility for the debt. He asked the creditor to confirm that information, but it has refused to do so. He again said he is willing to pay the debt. (Item 5; Item C.)

SOR ¶ 1.d was an unpaid \$160 medical debt from October 2008. Applicant paid it in March 2016. (Item A) It is resolved.

SOR ¶ 1.e was an unpaid \$88 medical debt from June 2013. Applicant paid it in March 2016. (Answer: 1.b.) It is resolved.

Applicant did not submit a budget or provide evidence that he participated in credit counseling. A CBR from June 2016 indicated that his mortgage, automobile loan, and credit card accounts are current. (Item C.)

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.¹

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.

Applicant accumulated five delinquent accounts totaling about \$10,300 between 2009 and 2015, which he did not begin to 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 delinquencies:

- (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;

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

(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's debts spanned a period from 2008 to 2015. Applicant indicated that his automobile was repossessed because he assumed more debt than he could afford when he took out the loan. That was not a circumstance beyond his control; hence, AG ¶ 20(b) does not apply. Applicant established some mitigation under AG ¶ 20(c). He did not submit evidence of financial counseling or a budget, but a June 2016 CBR indicated that his ongoing financial obligations were under control. Applicant demonstrated a good-faith effort to resolve his debts by paying four delinquent debts, albeit after he received the SOR. He also indicated that he had made a good-faith effort to resolve the largest debt, an automobile repossession, by contacting the creditor several times, and indicated his willingness to pay it. He established mitigation under AG ¶ 20(d) as to all SOR allegations.

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 responsibility for his financial matters. He is aware that future financial problems may jeopardize his employment. At this time, he has sufficiently resolved all debts, diminishing the potential for pressure, coercion, and duress. 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
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Subparagraphs 1.a through 1.e:	For Applicant
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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