



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



In the matter of:)
)
) ISCR Case No. 16-01535
)
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

07/31/2018

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns pertaining to Guidelines F (financial considerations) and E (personal conduct). Eligibility for access to classified information is granted.

Statement of the Case

On August 12, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and E. On October 6, 2016, Applicant responded to the SOR, and requested a hearing before an administrative judge.

On March 20, 2018, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On April 2, 2018, DOHA issued a notice of hearing scheduling the hearing for May 8, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through N, which were admitted without objection. I held the record open until June 8, 2018, to afford Applicant an opportunity to submit additional evidence. Applicant timely submitted AE F(1) through

M(1), which were admitted without objection.¹ On May 17, 2018, DOHA received the hearing transcript (Tr.).

Findings of Fact

Applicant is a 35-year-old forensics and biometrics tactical collection instructor employed by a defense contractor since October 2014. He seeks to retain his secret security clearance, which is a requirement to maintain employment. (GE 1; Tr. 12-13, 15-16, 63) He graduated from high school in 2001, and later earned approximately 80 college level credits. (GE 1; Tr. 13-14) Applicant married and divorced his first wife twice, and has been married to his second wife since May 2010. (GE 1; AE M; Tr. 21-22) He does not have any children. (GE 1)

Applicant had several periods of service in the U.S. Armed Forces in an active and reserve status. He served in the U.S. Air Force from December 2002 to June 2005, and was honorably discharged as an airman first class (pay grade E-3). He remained in the Inactive Air Force Reserve from July 2005 to February 2006 and was in the Active Air Force Reserve from February 2006 to March 2011. He served in the U.S. Army from March 2011 to July 2014, and was honorably discharged as a sergeant (pay grade E-5). Lastly, Applicant has been serving in the Active Air National Guard since August 2014. (GE 1; AE A, AE E, AE F; Tr. 14-16) He successfully held a security clearance for 13 of those years in the Armed Forces. (Tr. 16)

During Applicant's Army service, he was deployed to Afghanistan from December 2012 to October 2013. He was engaged in heavy combat and was "blown up six times," meaning that he was in a vehicle that was blown up or close enough to an explosion to feel the effects of an explosion. He personally witnessed casualties. Applicant has been diagnosed with traumatic brain injury (TBI), post-traumatic stress disorder (PTSD), sciatica, back injuries, joint injuries, and residual pain. He has difficulty being in large crowds and dealing with noises coming from different directions. (Tr. 17-21) As a result of his combat-related injuries, Applicant was awarded a 90% Veterans Affairs (VA) disability rating effective January 1, 2018. (AE G, H)

Financial Considerations

The SOR alleges ten delinquent debts totaling \$61,973. This amount includes several large debts to include two defaulted auto loans for \$24,282 and \$9,973, two student loans for \$2,764 and \$4,393, and a \$7,500 judgment. Applicant admitted in part and denied in part the ten debts. All of the debts, however, are listed on at least one credit report. (GE 2 – 4)

Applicant attributed his indebtedness to several factors to include being unemployed for four months after his discharge from the Army in July 2014, two divorces, and recovery from his combat-related injuries. (Tr. 25-26) His largest debt is a

¹ Applicant's post-hearing exhibits used duplicate markings of those used at hearing (AE F – M). To maintain clarity and differentiate between Applicant's hearing and post-hearing documents, post-hearing documents with marked with the sub number 1, i.e. F(1) through M(1).

\$24,282 charged-off automobile loan that he was unable to pay and stopped paying in May 2014. Applicant settled and paid that debt for \$4,743 the month after his hearing. (SOR ¶ 1.a; SOR answer; Tr. 26-27, 30, 36-38) Applicant's second largest debt is also a charged-off automobile loan that he is in the process of settling for \$7,000. (SOR ¶ 1.b; SOR answer; Tr. 27-28, 30, 38-40) His third largest debt is a \$7,500 state judgment for a student loan for which he is also in the process of negotiating a settlement. (SOR ¶ 1.j; SOR answer; Tr. 34-35, 50-52)

Applicant retained the services of a credit repair company to handle four of his debts -- a \$6,111 charged-off account, a \$114 collection account, a \$431 charged-off account, and a \$1,860 collection account. Applicant has been making \$239 monthly payments since 2016 to his credit repair company. Because he was dissatisfied with that credit repair company, Applicant recently hired a different credit repair company to continue making payments as necessary. He stated that the \$114, the \$431, and the \$1,860 debts have been paid. (SOR ¶¶ 1.c, 1.e - 1.g; SOR answer; AE F – J, AE L; Tr. 28-34, 40-47) Applicant does not recognize a \$4,545 collection account and is engaged in a good-faith dispute with the creditor. (SOR ¶ 1.d; SOR answer Tr. 30-31, 42-43) Lastly, the two remaining debts in the SOR are \$4,393 and \$4,393 student loans. Applicant settled those two accounts for \$5,661. (SOR ¶¶ 1.i, 1.j; Tr. 34, 47-49)

Applicant and his wife participated in online and in-person credit counseling. (Tr. 58-60) Applicant's joint monthly income of \$8,328 includes his salary, his wife's salary, and his VA disability benefits. His wife is a surgical technologist and earns \$19 an hour. With the three combined incomes, Applicant stated that he and his wife are able to meet their expenses "[o]ne hundred percent." His budget reflects that he and his wife lead a modest lifestyle and live within their means. (AE C, AE K; Tr. 24-25, 54-56, 60-62)

Personal Conduct

The SOR alleged and Applicant denied that he deliberately falsified his January 2015 security clearance application when asked whether he ever had a security clearance eligibility or security clearance access denied, suspended, or revoked. He answered no, but his clearance was purportedly suspended in March 2012. (SOR ¶ 2.a; SOR answer) Applicant contacted his security officer who informed him that he had no suspensions. Applicant and his security officer opined that his purported suspension occurred when he transferred from the National Guard to the active duty Army and was an "in house" occurrence. In any event, Applicant asserted that he did not intentionally falsify his security clearance application. (SOR answer; GE 5; Tr. 35-36, 52-54)

Character Evidence

Applicant submitted numerous reference letters that attest to his excellent job performance. He is praised for his reliability, leadership, technical proficiency, and trustworthiness. (SOR answer; AE B)

Policies

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

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 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 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 national security eligibility will be resolved in favor of the national security."

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 security 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 of 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

Financial Considerations

The security concern 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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" and "(c) a history of not meeting financial obligations." The record establishes these disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists five mitigating conditions potentially applicable here:

(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, a death, divorce or separation,

clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and 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; and

(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.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, he receives partial credit under AG ¶ 20(a) because the debt occurred under circumstances that are unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant merits credit under AG ¶ 20(b) as a result of his two divorces, his unemployment, and the debilitating nature of his PTSD. His divorces contributed to his earlier debts. After completing his Army service, he was unemployed and suffering from PTSD. He sought help from the VA and has regained his footing. He is doing very well in his current job and marriage. He has attempted to work with his creditors and took reasonable steps to resolve his debts.² AG ¶ 20(c) is fully applicable. Applicant has benefited from financial counseling and provided a sound and viable budget. He has produced evidence that reflects he is living within his means and is on track to regain financial responsibility. There are clear indications that his financial problems are resolved or are being resolved. Furthermore, there is sufficient information to establish partial if not full mitigation under AG ¶ 20(d).³ Applicant is continuing to work with his creditors to resolve his few remaining debts. AG ¶ 20(e) is applicable to SOR ¶ 1.e.

²"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

³The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

Personal Conduct

AG ¶ 15 articulates the security concern for personal conduct:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied deliberately falsifying his January 2015 security clearance application. He stated that he checked with his security officer regarding his security clearance status, who opined that an “in house” revocation had occurred when he transferred from the National Guard to the active duty Army. He was open and forthcoming during his hearing testimony. Given his experience completing security clearance applications, Applicant knew that lying about any aspect of his security clearance history would be discovered.

Based on the available information, it appears Applicant was confused or careless when completing his January 2015 security clearance application. His lack of attention to detail cannot be imputed as a willful and deliberate attempt to undermine the investigative process. Although the information he provided proved to be incorrect, I attribute this lapse to carelessness and am satisfied that he did not deliberately fail to disclose that his clearance was suspended in March 2012.⁴

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good-faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

⁴ The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

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(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.

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. I also considered Applicant's favorable character evidence. In addition to Applicant's hearing testimony, he provided substantial written character evidence in support of granting his clearance. He has served his country honorably and experienced combat first-hand. He sought professional help from the VA, was diagnosed with PTSD, among other things, and was awarded a 90% disability rating. He experienced divorce and unemployment. Applicant has since found purpose in his marriage and job, and is well on his way to regaining financial responsibility. Although he still has debts to resolve, he has a plan to resolve his remaining debts. I conclude Applicant mitigated the financial considerations security and personal conduct concerns.

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

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.j:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert Tuidier
Administrative Judge