



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-02283

Appearances

For Government: Andre M. Gregorian, Esquire, Department Counsel

For Applicant: Alan V. Edmunds, Esquire

03/28/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On January 7, 2017, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹ In a March 1, 2017, response, Applicant denied all but one allegation and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on April 26, 2017. The matter was scheduled on May 24, 2017, for a July 26, 2017, hearing. The hearing was convened as scheduled.

The Government offered two hearing exhibits (HEs.) and three documents, which were accepted into the record as HEs. 1-2 and exhibits (Exs.) 1-3 without objection. Applicant offered testimony, introduced one witness, and offered 28 exhibits, accepted

¹ The action was taken under Executive Order 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) effective within the DOD on or after September 1, 2006. Since that time, the AG has been again amended. The present AG, applied here, is in effect for any adjudication on or after June 8, 2017.

without objection as Exs. A-BB. The record was kept open through August 2, 2017, to provide additional time for the submission of supplemental materials. The transcript (Tr.) was received on August 3, 2017. On August 2, 2017, three additional documents were submitted by Applicant. With no objections raised, they were accepted as Exs. CC-EE and the record was closed. Based on the testimony, materials, and record as a whole, I find Applicant mitigated the security concerns.

Findings of Fact

Applicant is a 38-year-old man who has been performing aircraft maintenance and weapons loading for the same employer since August 2015. His present salary is between \$120,000 and \$130,000. He served in the United States Air Force from 2000 until his honorable discharge in 2006, and in the Air National Guard from 2009 until his honorable discharge in 2014. He has maintained a security clearance continuously since 2000. Applicant has earned an associate's degree. He is married and has four children and a stepchild, ranging in age between 15 and 3 years of age. At issue in this matter is approximately \$37,894 in delinquent debt.

Applicant's financial problems began in about June 2009, when he relocated to find employment. In the same year, Applicant's wife suffered her first period of unemployment. Together, the couple economized, made cuts, and Applicant found some part-time work. Applicant was employed from June 2009 until April 2010. He was again employed from May 2010 until November 2010, then unemployed until September 2014.² He has been employed since that time, although he has been without salary since this process began.

Applicant's wife has been working in the field of human resources since November 2016, earning \$50,000 a year. While her present employment is very stable, she has had three periods of unemployment in the past decade caused by layoffs: a year-and-a-half period, starting between 2009 and 2010, and a period of about two years, starting in 2012. The third period of unemployment lasted nearly four years and preceded her current job, which she began in November 2016. (Tr. 14-15, 20) Her unemployment caused a financial hardship for the family. With each bout of unemployment, the family made adjustments to live on reduced wages. (Tr. 22) Both Applicant and his wife have received financial counseling, which helped them adapt to their circumstances. (Tr. 17) They adhere to a budget and now eschew the use of credit cards, preferring to pay bills with cash.

At the hearing, the parties stipulated that the debts noted in the SOR at 1.d, 1.f, 1.h, 1.j, 1.n, and 1.o, representing \$3,099 in delinquent debt, have been paid. (Tr. 28-29, 58) Remaining at issue are the following debts from the SOR:

² Applicant did, however, continue with his Reserve National Guard obligations during his break in employment. (Ex. 1)

1.a – Balance due on voluntarily repossessed vehicle (\$11,402) – In repayment. This debt from 2013 or 2014 has been in repayment for the five months preceding the hearing. (Exs. A-B, CC)

1.b – Collection account (\$2,423) – Paid. This debt is related to a government overpayment. The balance was brought to \$0 in November 2016, before the SOR was issued. (Exs. C-D)

1.c – Collection account (\$1,300) – Paid. This balance owed on a government overpayment was also paid in or before November 2016, before the SOR was issued. (Ex. E)

1.e – Local government collection (\$792) – Paid/In Dispute. Applicant does not recognize this account, but he started making payments on it in February 2017. Meanwhile, he is disputing the debt. (Tr. 31-33, 45-46; Exs. H-I, DD)

1.g – Collection account (\$150) – Paid. This balance owed to a governmental entity was reduced to \$0 in or before November 2016, before the SOR was issued. (Ex. L)

1.i Charged-off account (\$9,213) – Seeking Validation/In Negotiation – In February 2017, Applicant wrote this entity a letter requesting validation of any outstanding debt balance related to this voluntary repossession. (Ex. N) It was unable to verify his account. He is willing to set up a payment plan on this debt if the account balance can be verified. He is willing to work with the creditor in any manner it suggests to eliminate this debt from his credit report. (Tr. 33-34; Ex. AA)

1.k – Collection account (\$7,700) – Disputed/Resolved. After seeking validation, this collection agency could not validate the obligation. Consequently, it has stopped collection on this matter. (Ex. BB)

1.l – Telecommunications collection (\$948) – In Dispute – Applicant denies ever having service with this entity and has written a letter to it for validation of the debt. (Ex. R)

1.m – Collection account (\$867) – In Dispute – Applicant believes this account is due to fraudulent charges and has disputed it. (Tr. 35; Ex. S)

Applicant executed a security clearance application (SCA) on or about August 19, 2015. In response to *Section 26 – Financial Record Delinquencies Involving Enforcement*, he answered “no” when asked whether he was currently delinquent on any federal debt for which he was the sole debtor. Such debts included those found in the SOR at 1.b, 1.c, and 1.g.³ In response to *Section 26 – Financial Record Delinquency Involving Routine Accounts*, he answered “no” as to whether he had any bills turned over to a collection agency, or had an account or credit card suspended, charged-off, or cancelled for failing to pay as agreed in the preceding seven years. In

³ In actuality, as shown by Applicant’s exhibits and discussed below, these debts were already paid by the time the January 2017 SOR was issued. Therefore, his answer was technically correct.

actuality, the debts at SOR allegations 1.a, 1.d, 1.e, 1.f, and 1.h – 1.o should have been noted.

Applicant had no intention to answer falsely on the SCA. (Tr. 36-38, 52) He had not checked his credit report in quite some time and he was unaware of the delinquent debts that should have been noted. (Tr. 36-38) He was also unaware of the status of many accounts because he had moved eight or nine times in the preceding 12 years, and he has experienced problems with forwarded mail. Once apprised of the previously unknown delinquent debts, he proceeded to address them. Other debts at issue had already been addressed before the issuance of the SOR.

It is Applicant's intention to continue addressing all accounts at issue as validations and income arrive. While the family coffers are presently tight as he continues to go without income pending resolution of this process, he is able to meet the family's essential financial needs. Overall, however, meeting the family's wants is tight. At the time of the hearing, money was particularly tight as the children were on summer break. He has economized and moved into a family member's house in order to reduce expenses. He has made no large purchases in the past few years. The family automobiles are older cars that were purchased used. He is current on his taxes.

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 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 the AG, 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 in making a decision.

The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for national security eligibility and 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 record evidence.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. Under the Directive, 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 to obtain a favorable security decision.

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Decisions are in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant.

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 or sensitive information.

Here, the Government offered documentary evidence reflecting that Applicant had numerous delinquent debts. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

Five conditions could mitigate the finance related security concerns posed here:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

There are multiple delinquent debts at issue, some dating back to the 2009-2010 period, when both Applicant and his wife started experiencing periods of unemployment. To meet the challenges posed by insufficient income, the couple economized, made cuts, and Applicant took on part-time work. This is sufficient to raise AG ¶ 20(b).

Applicant and his wife also sought and received financial counseling. Starting before the issuance of the SOR, some of the delinquent debts at issue were already paid. Others which were previously unknown have seen some degree of action. Today, the debt at SOR allegation 1.a is in repayment. The debts noted in the SOR at 1.d, 1.f, 1.h, 1.j, 1.n, and 1.o have been paid. The accounts referenced in the SOR at 1.e, 1.i, 1.k, 1.l, and 1.m have been put in dispute for genuine reasons. In short, all of the accounts at issue have been addressed. As for those not completely satisfied, Applicant is committed to honoring all debts shown to be his obligation. The mitigating conditions at AG ¶ 20(c)-(e) also apply.

Guideline E, Personal Conduct

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

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.

AG ¶ 16 describes conditions that could raise security concerns and may be disqualifying. Here, Applicant denied having delinquent accounts on his SCA. Therefore, if Applicant's answer was a falsity, the following disqualifying condition could apply:

AG ¶ 16(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 was highly credible in his assertion that his negative answer was the result of a failure to check his credit report. At the time, he was unaware of any debts with a delinquency status. He was unaware of this due to multiple moves and poor postal forwarding, as well as a general unawareness of his accounts. Now, after financial counseling, he is aware of the importance of monitoring his credit reports. Regardless, while he might be faulted for being less than diligent in his SCA answer regarding *Section 26 – Financial Record Delinquency Involving Routine Accounts*, there is no evidence of fraud or an intent to mislead.⁴ Therefore, I find AG ¶ 16 does not apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 38-year-old aircraft maintenance and weapons loading specialist who has worked for his current employer since August 2015. He served in the United States Air Force from 2000 until his honorable discharge in 2006, and in the Air National Guard from 2009 until his honorable discharge in 2014. Applicant has earned an associate's degree. He has maintained a security clearance continuously since 2000 without adverse incident. Applicant is married. Their blended family has four children.

At issue in this matter is approximately \$37,894. This delinquent debt was mostly acquired due to multiple periods of unemployment by both Applicant and his wife after they relocated in 2009 in search of better employment. At the time Applicant completed his most recent SCA, he was innocently unaware of the full extent of his financial situation and denied having delinquent debt. Ironically he had already addressed a few of the accounts now at issue.

In sum, Applicant has paid the debts at SOR allegations 1.d, 1.f, 1.h, 1.j, 1.n, and 1.o, and is in a reasonable repayment plan on the debt found at 1.a. While willing to honor them if it is confirmed he is responsible for them, he has earnestly disputed the debts noted in the SOR at 1.e, 1.i, 1.k, 1.l, and 1.m. With the help of productive financial counseling, he has addressed all the accounts at issue. While finances are still tight, Applicant's wife has recently returned to the workforce after a period of unemployment,

⁴ Applicant's negative answer regarding *Section 26 – Financial Record Delinquencies Involving Enforcement* was actually correct. The evidence shows that these accounts were paid before the January 2017 SOR was issued. See Exs. C, D, E, and G.

and Applicant should start generating a salary again once he is found eligible for a security clearance. In light of the above, I find Applicant has mitigated financial considerations and personal conduct 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
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Subparagraphs 1.a-1.o:	For Applicant
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Paragraph 2, Guideline E:	FOR APPLICANT
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Subparagraphs 2.a-2.b:	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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge