



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



In the matter of:)
)
) ISCR Case No. 17-03393
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

08/17/2018

Decision

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant mitigated the security concerns arising under the Financial Considerations and Personal Conduct guidelines related to his history of excessive indebtedness and failure to disclose his debts. National security eligibility for access to classified information is granted.

Statement of the Case

On December 1, 2016, Applicant submitted an electronic Questionnaire for Investigations Processing (e-QIP). On October 17, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under the Financial Considerations and Personal Conduct guidelines. 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 Security Executive Agent Directive

(SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implemented effective June 8, 2017.

Applicant answered the SOR in writing (Answer) on October 28, 2017. He requested a hearing before an administrative judge. The case was assigned to another administrative judge on January 4, 2018 and reassigned me on January 25, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on February 6, 2018. I convened the hearing as scheduled on March 14, 2018. The Government offered Government Exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified on his own behalf, and presented Applicant Exhibit (AE) A and B, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on March 21, 2018. The record was left open for the receipt of additional evidence until June 14, 2018. The Government submitted GE 4, and Applicant submitted AE C through AE F. GE 4 and AE C through AE F were admitted without objection. The record then closed.

Procedural Matters

Pursuant to Additional Procedural Guidance ¶¶ E3.1.2, E3.1.3, E3.1.7, and E3.1.13 of the Directive, Department Counsel moved to amend the SOR issued to Applicant to correct a typographical error. The date of the e-QIP, identified in SOR ¶ 2.a was incorrectly alleged as December 23, 2015. The Government moved to amend that date to December 1, 2016, to conform to the evidence. Applicant had no objection to the amendment and I granted the motion. (Tr. 11.)

Findings of Fact

Applicant is 41 years old. He has been employed by a government contractor for the past 16 years. He earned a bachelor's degree in 2000. He married in 2005. They have one minor son. (GE 1.)

In SOR ¶¶ 1.a through 1.c, Applicant was alleged to be indebted to three creditors in the amount of \$22,376. He admitted the debts in SOR ¶¶ 1.a and 1.b, but denied SOR ¶ 1.c. His debts were listed on his March 23, 2017 credit report. (GE 3.)

Applicant attributed his financial problems to a decline in his wife's business. She started a business in 2006. Applicant trusted her to maintain that business and their household finances. She acquired credit cards in their names, which she used for business purchases. The business made money until approximately 2013, when her income declined. She closed the business in 2016. Applicant was unaware of her delinquent business accounts until 2017. Applicant exhausted his savings trying to pay their debts. He relied on credit cards to make ends meet. Their financial problems grew until Applicant was able to sell his home in July 2017. (Tr. 21-38.)

Applicant was indebted to a bank on a collection account in the amount of \$17,267, as alleged in SOR ¶ 1.a. Applicant's March 2018 credit report reflected the date "major delinquency reported" as February 2017. (GE 3; GE 4.) Applicant presented a letter from

the collection agent for this creditor showing the account was paid in full. The letter was dated May 14, 2018. It is resolved. (AE C.)

Applicant was indebted to a bank on a collection account in the amount of \$5,047, as alleged in SOR ¶ 1.b. Applicant's March 2018 credit report reflected the date "major delinquency reported" as May 2016. (GE 4.) Applicant entered into a settlement agreement to resolve this debt for a payment of \$1,263. He documented that he made that payment to the collection agent on March 23, 2018. This debt is resolved. (AE E; Tr. 41-44.)

Applicant was indebted on a collection account in the amount of \$62, as alleged in SOR ¶ 1.c. Applicant's March 2017 credit report reflects the last action on this account was in January 2016, with a report date of March 2017. (GE 3) This debt was for Applicant's son's eye doctor visit. He credibly averred that this debt was repaid via check about a month prior to the hearing. This debt no longer appears on his credit report. It is resolved. (GE 4; Tr. 45-46.)

Applicant plans to divorce his wife. He no longer trusts her with their finances and believes she is frivolous with finances. (Tr. 64-67, 91.) He has reduced expenses, sold his family's residence, and paid off all delinquent accounts. He drives a modest used vehicle that is fully paid off. He only has one credit card and keeps a low balance on it. He has sufficient income to cover his monthly expenses. His March 2018 credit report reflects no new past-due accounts. (Tr. 64-66.)

SOR ¶ 2.a alleged that Applicant failed to disclose his delinquent consumer accounts in Section 26 of his e-QIP. Applicant denied intentionally falsifying his December 2016 e-QIP. At the time he completed his e-QIP, his wife was deceiving him about the delinquent business accounts. She told him she had them under control. He did not exercise due diligence in investigating their financial situation at that time. (Tr. 77-78, 84.) He explained that he knew of other financial accounts that he had missed payments on and was embarrassed about them, but that those accounts he was aware of did not rise to the level of being 90 or 120 days past due, and had not been placed for collections at the time he completed the e-QIP. He later learned of the delinquent business debts, which he voluntarily disclosed to an agent of the Office of Personnel Management (OPM) during his April 2017 interview. His credit report reflected that the major delinquency on the debt alleged in SOR ¶ 1.a was not reported until after he completed his e-QIP. While the debt alleged in SOR ¶ 1.b has a last action dated of January 2016, Applicant was ignorant of that delinquency when he completed the e-QIP. Similarly, he was ignorant of the medical debt alleged in SOR ¶ 1.c, as his wife claimed it had been paid. He did not intentionally falsify his e-QIP. (GE 1; GE 2; Tr. 79-87.)

Applicant's performance review reflects he "maintains excellent performance" and his "overall leadership characteristics for the company are strong." Additionally, six professional associates from Applicant's place of employment wrote letters of support attesting to his trustworthiness and professionalism. (AE D; AE F.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 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 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. Directive ¶ E3.1.15 states 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 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.

Finally, 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

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.

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

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

Applicant had three delinquent debts totaling \$22,376. His debts became delinquent between 2016 and the present. There is sufficient evidence to support the application of the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

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

Applicant's debts are attributable to a decline in his wife's business and her mismanagement of their finances. Since learning of their delinquencies, Applicant has sold his home, decreased expenditures, and repaid all delinquent accounts. He now exercises control over his finances. He does not trust his wife to manage their finances

and intends to file for divorce. Future financial problems are unlikely. AG ¶¶ 20(a) and 20(d) provide mitigation.

Guideline E: Personal Conduct

The security concern relating to the guideline 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant credibly testified that he did not disclose his alleged delinquent debts on his e-QIP because he was unaware of them. His wife hid the depth of their financial problems from him. When he became aware of their growing delinquencies, he discussed them openly with the OPM investigator. His omissions were intentional. The evidence is insufficient to raise this disqualifying condition.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(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 national security eligibility 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 has worked for his employer for 16 years. He is respected by his colleagues for his truthfulness and is highly rated on evaluations. He demonstrated responsible action over the past two years with respect to his financial accounts, by resolving all delinquencies and reducing expenditures. The record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guidelines F and E.

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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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 access to classified information. National security eligibility is granted.

Jennifer I. Goldstein
Administrative Judge