



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



In the matter of:)
)
) ISCR Case: 14-03993
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

November 10, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 60-year-old employee of a defense contractor. As listed in the SOR, Applicant was alleged to be delinquent on ten debts in the total amount of \$54,535. He has resolved seven of his delinquencies, and he is making payment on the remaining three accounts. Eligibility for access to classified information is granted.

Statement of the Case

On December 24, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective September 1, 2006.

Applicant answered the SOR on May 28, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to another

administrative judge on July 31, 2015, and then reassigned to me on August 18, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 13, 2015, scheduling the hearing for September 15, 2015. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered Exhibit (AE) A, which was admitted without objection. Applicant testified. DOHA received the transcript of the hearing (Tr.) on September 23, 2015. The record was left open for Applicant to submit additional exhibits. Applicant presented additional exhibits marked AE B through AE E. Department Counsel had no objections to AE B through AE E and they were admitted. The record then closed.

Findings of Fact

Applicant is 60 years old. He has been employed with his current employer, a Government contractor, for 28 years. He is married and has three adult children. He and his wife provide care for three foster children and their grandchild.

The SOR alleged Applicant owes approximately \$54,535 on ten delinquent financial obligations. In his Answer, Applicant admitted SOR allegations 1.a, and 1.c through 1.h. He denied SOR allegations 1.b, 1.i, and 1.j. His debts are documented in the record credit reports dated May 10, 2012; April 9, 2014; July 20, 2015; and September 14, 2015. (GE 3; GE 4; GE 5; GE 6.) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant was alleged in SOR ¶ 1.a to be indebted on a loan in the amount of \$49,153. This debt became delinquent in 2009. Applicant contacted this creditor to arrange payments, but the creditor was unwilling to accept payment because it had charged off the debt. The creditor sent Applicant a 1099-C showing that the debt was discharged. (AE B.) This debt is resolved.

Applicant was alleged in SOR ¶ 1.b to be indebted on a delinquent cell phone account in the amount of \$905. At hearing he testified that he was not familiar with this account. However, his post-hearing documentation showed he contacted this creditor and arranged to make payments on this debt. On September 29, 2015, he submitted \$317.98 to this creditor as the first payment under this agreement. Applicant is resolving this debt. (AE C.)

Applicant was alleged in SOR ¶¶ 1.c through 1.g to be indebted to a city government for five unpaid parking tickets totaling \$401. Applicant testified he loaned his vehicle to his daughter while she was attending college and, unbeknownst to him, she received parking tickets that she did not pay. He contacted this creditor and resolved all five delinquencies. He provided a receipt from the city government to document that these tickets were paid in full. (AE D.)

Applicant was alleged in SOR ¶ 1.h to be indebted on a medical collection account in the amount of \$21. He contacted the collection agent and resolved this debt in full on September 28, 2015, as documented in a letter from this creditor. This debt is resolved. (AE E.)

Applicant was alleged in SOR ¶ 1.i to be indebted on a medical collection account in the amount of \$3,432. He provided documentation that shows he contacted the collection agent and negotiated a monthly payment of \$371.49. His first payment was made September 15, 2015. This debt is being resolved. (AE A.)

Applicant was alleged in SOR ¶ 1.j to be indebted on a medical collection account in the amount of \$623. He contacted the collection agent and negotiated a payment plan of three equal installments of \$208.33. While he did not document any payments under this plan, he intends to fully resolve this debt. This debt is being resolved. (AE E.)

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 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(a) and 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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." Section 7

of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

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.

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 ten debts in the total amount of \$54,535. These debts establish both a history of delinquencies and an inability or unwillingness to satisfy his obligations. The evidence raises security concerns under the above conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. I find the following two provide mitigation:

(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 addressed all of his ten delinquent debts. Seven are fully resolved and he is making payments on three others. As he resolved those eight debts, he has shown a recent track record of making consistent payments. He can be trusted to continue to make his monthly payments on his three remaining delinquencies. His financial delinquencies are under control and he is making a good-faith effort to repay his creditors. Applicant's indebtedness does not cast doubt on his current reliability, trustworthiness, or good judgment. The security concerns with respect to his financial delinquencies are mitigated. The above conditions apply.

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 served as a Government contractor for more than 28 years. He has held a security clearance, without violation, that entire time. He acted responsibly by resolving seven debts and making payments on three others. Overall, the record evidence leaves me without doubt

as to Applicant's present eligibility and suitability for a security clearance. He met his burden to mitigate the security concerns arising under the guideline for 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

Subparagraphs 1.a through 1.j: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge