



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



In the matter of:)
)
) ISCR Case No. 14-06516
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

08/04/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, and he mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On January 31, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and 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 (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on March 4, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on May 11, 2015. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and

submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 27, 2015. He responded with a letter that I have marked Applicant's Exhibit (AE) A. The case was assigned to me on June 23, 2015. The Government exhibits included in the FORM and AE A are admitted without objection.

Findings of Fact

Applicant is a 40-year-old employee of a defense contractor. He has worked for his current employer since 2007. He served on active duty in the U.S. military from 2003 until he was honorably discharged in 2007. He attended community college for a period, but he did not earn a degree. He is married with three children and a stepchild.¹

Applicant served two tours in Iraq. He saw a significant amount of combat, and he was in a vehicle that was hit by an improvised explosive device (IED). He has had difficulties resolving his disability claims for his injuries with the Department of Veterans Affairs (VA).²

Applicant was unemployed for about five months after he was discharged from the military in 2007. His wife was also not working, and they struggled to pay their bills. Applicant injured himself at work, and he required surgery in January 2014. He received workers' compensation, but he was unable to work the overtime hours that he had come to rely on.³

The SOR alleges an unpaid \$223 judgment, eight delinquent medical debts with balances totaling about \$3,443, and ten miscellaneous delinquent debts with balances totaling about \$5,416. Applicant admitted owing the majority of the debts. Each debt is listed on at least one credit report, although several of the debts appear to be duplicates.⁴

SOR ¶ 1.e alleges a \$96 debt for the balance due on an auto loan after the vehicle was repossessed. Applicant denied owing the debt. The credit reports list a \$3,313 judgment to the same creditor that was filed in September 2011 and paid in October 2012. Applicant's statement that the debt was paid through the judgment is logical and accepted.⁵

Applicant was unaware of the extent of his financial issues until he was questioned for his background investigation in April 2014. He paid a number of debts

¹ Items 3, 4; AE A.

² Items 3, 4; AE A.

³ Items 3, 4.

⁴ Items 2, 4-6.

⁵ Items 2, 4-6.

that were not alleged in the SOR. His repayment efforts were hindered by the loss of overtime. He knows it will take time, but he intends to pay his delinquent debts.⁶

Applicant submitted a Questionnaire for National Security Positions (SF 86) in December 2013. He did not list any delinquent debts under the financial questions. He denied intentionally falsifying the SF 86. He was unaware of the extent of his financial problems. He stated that he “may not be as smart as some people in this world,” and that he was unsure how to answer certain questions.⁷ Having considered all the evidence, I find that he did not intentionally falsify the SF 86.

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, 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 access to classified information will be resolved in favor of 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

⁶ Items 4-6; AE A.

⁷ Items 2-4; AE A.

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

Guideline E, Personal Conduct

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

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 did not intentionally provide false information on his SF 86. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant had delinquent debts that he was unable to pay. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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, 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.

Applicant was unemployed for about five months after his discharge from the military. He injured himself at work, and he was unable to work the overtime hours that he had come to rely on. He paid a \$3,313 judgment and a number of other debts that were not alleged in the SOR. His finances are still far from perfect, but he is committed to paying his delinquent debts.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that much of Applicant's financial problems were caused or exacerbated by conditions that were beyond his control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. The above mitigating conditions are partially, but not completely, applicable because Applicant is still in the process of resolving his debts.

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.

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 E and F in this whole-person analysis.

I considered Applicant's honorable military service, particularly his combat tours in Iraq. He still has steps he needs to take to remedy his financial problems. He has earned the additional time required to complete those steps.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, and he mitigated the financial considerations 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
Subparagraphs 1.a-1.s:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge