



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 15-00103 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

01/08/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On August 15, 2015, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on September 3, 2015, and elected to have his case decided on the written record. On October 19, 2015, Department Counsel

submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant and it was received on October 27, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and Items 2 and 4 through 8 are admitted into evidence. Applicant provided additional evidence that is marked as Items 9 through 15. There was no objection and they are admitted into evidence. The case was assigned to me on December 9, 2015.

Findings of Fact

Applicant admitted all of the SOR allegations except ¶¶ 1.a and 2.a. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old. He graduated from high school in 1988 and has completed some college credits. He married in 1996 and has three children ages 29, 17, and 15. He has worked for federal contractors since 1996 and for his current employer, a federal contractor, since 2005. He has held a security clearance since approximately 2003.

In 1998 Applicant filed Chapter 13 bankruptcy. He completed the terms of the bankruptcy in 2002 and his debts were discharged.

In June 2014, Applicant completed a security clearance application (SCA). Question 26 asked about his finances, specifically if in the past seven years he had defaulted on a loan; had bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; if he had been 120 days delinquent on any debt; or if he was currently 120 days delinquent on a debt. Applicant responded "no." In his answer to the SOR, Applicant stated his wife is responsible for handling all of the family finances, and he was unaware when he completed the SCA that there were financial delinquencies for which he was responsible. He stated he contacted the creditors of the delinquent debts and arranged payment plans with each. The debts alleged in the SOR are supported by credit reports from June 2014, December 2014, and October 2015. The last activity noted on the credit reports on the alleged debts is from 2010.¹

The tax lien alleged in SOR ¶ 1.a (\$206) was recorded in November 2013 and was released in August 2015. Applicant provided documents showing the lien was paid.²

The debt in SOR ¶ 1.b (\$6,512) is a credit card collection debt. Applicant made a settlement agreement with the creditor to satisfy the debt for \$651. He made three

¹ Items 6, 7, and 8.

² Answer to SOR with attachments.

monthly payments of \$217.33 in August, September, and October 2015, and the debt is resolved. Applicant provided supporting documents.³

The debt in SOR ¶ 1.c (\$4,718) is a credit card collection debt. Applicant has a agreement with the creditor to settle the debt for \$3,302. He is making \$250 monthly payments that began in September 2015. He provided documentary proof of the agreement and three monthly payments. By the terms of the agreement the settlement should be satisfied in September 2016.⁴

The debt in SOR ¶ 1.d (\$727) is a collection account. Applicant established a payment plan in September 2015 and is making \$83.69 monthly payments. He provided documentary proof of the agreement and his first three payments.⁵

Applicant explained that it took some time after his background interview when he learned of the debts to make payment arrangements because he and his wife worked together to establish plans that would fit within their monthly budget. He has now become more involved in managing the family finances. Applicant indicated that while holding a security clearance he has always protected classified information and has been reliable and trustworthy. Applicant indicated that he provided answers on the SCA to the best of his knowledge at the time, and he did not deliberately provide false information. Although Applicant may have been somewhat negligent in not asking his wife about their finances or actually checking his credit report before completing the SCA, I find his failure to disclose his delinquent debts on his SCA was not deliberate or intentional.⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 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,

³ Items 10 and 11; Answer to the SOR with attachments.

⁴ Items 12 and 13.

⁵ Items 14 and 15.

⁶ Response to FORM.

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.” 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, 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 as to obtaining 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 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.

Section 7 of Executive Order 10865 provides that 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 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. I have considered the following under AG ¶ 19:

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

Applicant completed a Chapter 13 bankruptcy in 2002. Subsequently, he had accumulated a tax lien and three delinquent debts totaling approximately \$12,163. The last activity on some of the debts was in 2010. The above disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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;
- (d) the individual initiated 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 claimed he was unaware of his delinquent debts because his wife manages their finances. This is not a condition that was beyond his control. Applicant had completed a bankruptcy and should have been more conscientious regarding his finances. AG ¶ 20(b) does not apply. Since learning of his delinquent debts, Applicant has paid the tax lien in SOR ¶ 1.a, and established payment plans with the creditors in SOR ¶¶ 1.b and 1.c. He provided proof he is making payments to the creditors and completed the settlement agreement for the debt in SOR ¶ 1.d. He is still resolving his delinquent debts, so his behavior is ongoing and recent. Applicant's bankruptcy, coupled with his recent delinquent debts, indicates it is too early to conclude that his

behavior is unlikely to recur. AG ¶ 20(a) does not apply. No evidence was presented that Applicant has received financial counseling. However, there is sufficient evidence to conclude there are clear indications that Applicant's financial problems are being resolved and are coming under control. He has initiated payment plans with the creditors alleged and resolved two of the SOR alleged debts. AG ¶¶ 20(c) and 20(d) apply. The evidence did not raise the application of AG ¶ 20(e).

Guideline E, Personal Conduct

AG ¶ 15 expresses 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 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. I find the following 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 SCA. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

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 the 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 F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 45 years old. He had debts discharged in a Chapter 13 bankruptcy in 2002. His wife was managing the finances, and he was unaware they accumulated some delinquent debts. He has taken appropriate action to resolve his debts and has payment plans in place. Although I am somewhat concerned about Applicant's past financial history, he provided sufficient evidence to show he is now acting responsibly by being more involved in handling his finances and resolving delinquent debts. Applicant met his burden of persuasion. The record evidence does not leave me with questions or 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 Guideline F, financial considerations, and I find he refuted the allegation under Guideline E, personal conduct.

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:

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| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a-1.e: | 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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge