



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



In the matter of:)	
)	
)	ISCR Case No. 15-00814
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

April 19, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 57-year-old employee of a defense contractor. He is alleged to be indebted to four creditors in the approximate amount of \$97,771. Applicant has been making regular payments on two of the debts. He has documented a rational basis for disputing the two remaining SOR-listed debts. Eligibility for access to classified information is granted.

Statement of the Case

On February 26, 2014, Applicant submitted an e-QIP. On August 1, 2015, 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 October 15, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on January 19, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 20, 2016, scheduling the hearing for March 1, 2016. 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 on his own behalf. The record was left open for Applicant to submit additional exhibits and on March 24, 2016, Applicant presented six additional exhibits marked AE B through AE G. Department Counsel had no objection to AE B through AE G and they were admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on March 7, 2016.

Findings of Fact

Applicant is a 57-year-old employee of a government contractor. He has worked for his employer since 2013. He served on active duty with the Air Force from 1984 to 1986. He served on Active Duty with the Navy from 1986 to 2006. He retired in 1986 with an honorable discharge at the rank of commander. He held a security clearance for 32 years, without incident. He is married and has three children. (GE 1; Tr. 14-17, 29-31.)

The SOR alleged that Applicant was indebted to four creditors in the approximate amount of \$97,771. Applicant admitted SOR subparagraphs 1.a, 1.c. and 1.d in his Answer, with clarifications. He denied the debt in SOR subparagraph 1.b. His debts are listed in an incident report and the credit reports entered into evidence. (Answer; GE 2; GE 3; GE 4; GE 5; GE 6.)

SOR subparagraph 1.a alleged that Applicant was \$34,028 past due on a home equity line of credit. Applicant fell delinquent on this debt in 2012. He documented that he has been making payments on this debt since 2013. The balance has decreased to \$23,394.81 as of March 2016. Applicant is resolving this debt. (AE C; Tr. 24-26, 31-36, 48.)

SOR subparagraph 1.b alleged that Applicant was indebted on a collection account in the amount of \$28,794. This debt is held by the same creditor identified in subparagraph 1.a. Applicant contests this debt. He presented a letter from this creditor that indicated the debt identified in subparagraph 1.a “is currently the only debt that you owe to [creditor.]” Applicant has provided documented proof to substantiate the basis of this dispute. (AE B; AE C; Tr. 24-26, 31-36, 48.)

SOR subparagraph 1.c alleged that Applicant was indebted to a for-profit educational institution in the amount of \$8,091. Applicant disputes this debt, as noted on his Equifax credit report. He documented that he made payments on this debt in 2014 and 2015 that were not credited to his account. He has the funds to fully resolve this debt, but will not remit them until the creditor responds to his inquiries as to why his account has not been properly credited with his previous payments. Applicant is acting responsibly with respect to this debt. (AE E; Tr. 26-27, 37-40.)

SOR subparagraph 1.d alleged that Applicant was indebted to the Federal Government on a tax lien entered against him in April 2013 in the amount of \$26,858 as a result of a mistake he made on his 2008 federal income tax return. Applicant testified he has a payment agreement with the IRS to resolve this debt through monthly payments of \$250. He presented documentation showing he successfully made \$250 payments in December 2015, January 2016, and February 2016. He further claimed to have been making payments for the past two-and-a-half years. He documented his balance has declined to \$18,300.81. Applicant is resolving this debt. (AE A; AE F; Tr. 27, 41-42.)

Applicant attributed his delinquencies to the failure of a construction business he started in 2004. The investor in the project withdrew in 2006 due to the downturn in the economy, leaving Applicant with a significant amount of debt. He did his best to remain solvent, including listing his home for sale in 2010. However, it did not sell. Applicant focused on resolving his debts through payments and was able to pay off a significant amount of debt over time, as reflected in his credit reports. His most recent credit report shows he is not getting further into debt and is working diligently to address all of his remaining delinquencies. (GE 6; Tr. 14-17, 44-48.)

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 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 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 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.

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 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 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.

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 for Financial Considerations is set out in AG ¶ 18, as follows:

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 became delinquent on three financial obligations totaling \$68,977, as alleged in SOR subparagraphs 1.a, 1.c, and 1.d. Applicant’s home equity line of credit was delinquent for six months in 2012. He became delinquent on his tuition in 2011. He erred on his 2008 Federal income tax return which caused a debt to the Federal Government of \$26,858, and a tax lien to be filed in that amount in 2013. The Government established that Applicant had a history of not meeting financial obligations

with respect to these three debts, which established a case for disqualification under Guideline F.

The creditor for SOR subparagraph 1.b, however, has indicated that Applicant is not indebted on that account and I find it was incorrectly reported on Applicant's credit report.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial obligations. The following are 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;

(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's financial difficulties are unlikely to occur again and they do not cast doubt on his current reliability, trustworthiness, or good judgment. Since the downturn in the economy and the failure of his construction business in 2006, he has diligently worked to repay his creditors. He is currently repaying two of his three remaining creditors on a monthly basis. Over the past few years, he has resolved \$10,633 on the home equity line of credit, and \$8,557 on his Federal tax debt. He is acting responsibly with respect to these debts. Mitigation under AG ¶¶ 20(a), 20(b), 20(c), and 20(d) was established with respect to SOR subparagraphs 1.a and 1.d.

Mitigation under AG ¶ 20(e) is established with respect to SOR subparagraphs 1.b and 1.c. The creditor in subparagraph 1.b verified that the credit report entry was in error. With respect to subparagraph 1.c, Applicant provided documented proof to substantiate the basis of his dispute. In this instance, he is acting reasonably by withholding payment until he is sure that the funds he remits will be properly credited to

his delinquent account. He has the funds available to fully resolve this debt once the creditor will allow him to do so.

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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant honorably served in the military for 22 years. He held a security clearance for 32 years, without violation. He has acted responsibly by addressing his debts. There is little likelihood of recurrence.

Overall, 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 has mitigated the Financial Considerations security concern.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	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