



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case: 15-03525
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel
For Applicant: *Pro se*

April 28, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 55-year-old employee of a defense contractor. As listed in the Statement of Reasons (SOR), Applicant was alleged to be delinquent on two debts in the total amount of \$22,974. Both debts are resolved. Eligibility for access to classified information is granted.

Statement of the Case

On December 6, 2015, the Department of Defense issued an 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 December 21, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on March 15, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 16, 2016, scheduling the hearing for April 4, 2016. The hearing was convened

as scheduled. The Government offered Hearing Exhibit (HE) I, and Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered Exhibits (AE) A through AE E, which were admitted without objection. Applicant testified. DOHA received the transcript of the hearing (Tr.) on April 12, 2016. The record was left open for Applicant to submit additional exhibits. Applicant presented additional exhibits marked AE F through AE O. Department Counsel had no objections to AE F through AE O and they were admitted. The record then closed.

Findings of Fact

Applicant is 55 years old. He has been employed with his current employer, a Government contractor, for 30 years. From August 1979 to August 1983, Applicant served in the U.S. Coast Guard. He is married and has two adult children. (GE 1; AE G.)

The SOR alleged Applicant owes approximately \$22,974 on two delinquent financial obligations. In his Answer, Applicant denied SOR allegations 1.a and 1.b. His alleged debts are documented in the record credit reports dated March 10, 2007; November 15, 2012; March 30, 2015; and February 28, 2016. (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 delinquent mortgage in the amount of \$16,499. Applicant purchased a home in 2005. He financed that purchase with a \$300,000 mortgage. His mortgage was sold multiple times to numerous creditors. In the process of transferring Applicant's mortgage, a lender thought that Applicant had let his home owner's insurance lapse and took out a "forced insurance policy" on Applicant's residence. Applicant did have insurance and provided documentation of his insurance policy to that creditor. However, that creditor failed to correct Applicant's account before it sold the mortgage to another lender. As a result, when the creditor identified in 1.a, acquired the loan, it thought Applicant did not have insurance for approximately 24 months and applied Applicant's mortgage payments, which he had successfully made without fail, to the forced insurance payments instead of to the loan's principal and interest, creating a delinquency. Applicant hired an attorney and sued this creditor. The complaint went to mediation. As a result of the mediation, this creditor entered into a written general release and settlement agreement with Applicant, which Applicant provided into evidence. In the settlement agreement, the creditor agreed to "adjust the payment history of the Account to reflect [Applicant has] made all required monthly principal and interest payments from May 2012 through [the date of the agreement]." He was credited for payments on his principal mortgage and the total value of the debt is now \$240,979.87. Applicant was also awarded \$5,000, for attorney's fees. This debt has successfully been disputed and is resolved. (AE A; AE C; AE H; AE I; Tr. 28-33.)

Applicant was alleged in SOR ¶ 1.b to be indebted to a creditor in the amount of \$6,475. This debt was for a travel card applicant used while on work trips. He traveled approximately 47 weeks during the year in dispute. When he filed his travel claims, the company did not approve \$6,475 of his expenses, although he itemized his account. He contested this debt with both the company and his travel card. The creditor filed for a judgment. Applicant presented his case in court and was found liable. He accepted the court's findings. He paid the balance in full on April 7, 2009, as evidenced by a satisfaction of judgment entered into evidence. This debt is resolved. (AE B; AE E; Tr. 24-28.)

Applicant's colleague wrote a highly laudatory letter on Applicant's behalf. It indicates Applicant "is a great combination of grounded wisdom, high-standards, and attention to detail." Applicant's work-performance evaluations reflect he is a valued employee. (AE D; AE J; AE K; AE L; AE M; AE N; AE O.)

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 one condition that could raise security concerns and may be disqualifying in this case:

(c) a history of not meeting financial obligations.

Applicant’s credit reports reflected two delinquent debts in the total amount of \$22,974. These debts established a history of delinquencies. 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 provide mitigation:

(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;

(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 problems occurred under unusual circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. He had disputes with both creditors. He was found to be liable for his credit card debt and resolved it in full in 2009. The dispute regarding his mortgage debt was resolved by a mediator in his favor. His financial problems are now resolved. All of the above mitigating conditions have applicability.

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 in the U.S. Coast Guard and then as a Government contractor for more than 30 years. He acted

responsibly by resolving one debt and disputing the other. 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 and 1.b:	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