



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



In the matter of:)
)
) ISCR Case No. 15-04946
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Ryan Nerney, Esq.

July 6, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be delinquent on nine debts totaling \$11,246. All of the alleged debts are resolved. Eligibility for access to classified information is granted.

Statement of the Case

On September 12, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F.¹ The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on September 27, 2016, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on December

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was decided under the previous Adjudicative Guidelines.

19, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 20, 2016, scheduling the hearing for February 10, 2017. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7. GE 1 and GE3 through GE 6 were admitted without objection. Applicant objected to GE2, but that objection was withdrawn after Applicant offered clarifications on that document (Tr. 54.), and it was admitted. GE 7 was admitted over Applicant's objection. (Tr. 14.) Applicant testified on his own behalf. Applicant presented five documents, which I marked Applicant's Exhibits (AE) A through E. AE A through AE E were admitted without objection. The record was left open until February 21, 2017, for receipt of additional documentation. On February 21, 2017, Applicant presented AE F through AE L, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on February 23, 2017.

Findings of Fact

Applicant denied the allegations in SOR ¶¶ 1.a through 1.i. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 64-year-old employee of a defense contractor. He has been employed with the defense contractor for 12 years. He has held a security clearance since 2005. He is married, and has one adult son. Applicant and his son have the same first, middle, and last names, with the exception that Applicant is "senior" and his son is "junior." (GE 1; AE D; AE E; Tr. 18-20, 44.)

Applicant was alleged to be delinquent on nine debts totaling \$11,246. These debts appear on credit reports in evidence. (GE 4; GE 5; GE 6.)

Applicant was alleged to be indebted to a city on three delinquent debts, each totaling \$65 (or \$195 collectively) in SOR ¶¶ 1.a through 1.c. Applicant explained that these debts were for dog licenses from his city government in 2013 that were inadvertently overlooked. Applicant provided documentation that shows these debts were paid in full on February 7, 2017. These debts are resolved. (AE J; Tr. 27-29, 46.)

Applicant was alleged to be delinquent on a timeshare account in the amount of \$8,966 in SOR ¶ 1.d. When he signed the contract for the timeshare, he was told his monthly payments would be \$200 to \$300. He was not aware that he would be charged maintenance fees on top of his monthly payments. He could not afford the additional costs. He fell behind on the account in 2011. Applicant and his wife never used the timeshare property. His wife attempted to arrange payments to resolve the delinquency, but was told that the debt had been cancelled. Applicant presented documentation showing the debt as "closed/cancelled" and a zero balance. This debt is resolved. (AE A; AE K; Tr. 29-33, 47.)

Applicant was alleged to be delinquent on a vehicle impound fee in the amount of \$1,711 in SOR ¶ 1.e. The vehicle in question belonged solely to Applicant's adult son.

Applicant's son signed an affidavit to that effect and provided proof he paid this debt. This debt is resolved. (GE 5; AE F; AE G; Tr. 33-34, 48-51.)

Applicant was indebted to a city on four delinquent parking tickets placed for collections in the amounts of \$94, \$94, \$92, and \$94, respectively, as alleged in SOR ¶¶ 1.f through 1.i. These debts were incurred by Applicant's son on his personal vehicle. Applicant's son's signed affidavit took sole responsibility for these debts, and provided documentation that they were paid. These debts are resolved. (AE F; AE G; Tr. 34-35, 51.)

Applicant attributes his delinquencies to his wife's mismanagement of their accounts. He now monitors their finances personally, to make sure all debts are being paid in a timely manner. (Tr. 52.) He will not purchase a timeshare again. (Tr. 47.) Applicant and his wife completed financial counseling with a nonprofit credit agency on February 7, 2017. (Tr. 52-53.) A cash flow analysis provided by Applicant shows he has a total net monthly income of \$7,500 and monthly expenses of \$4,975. He has assets valued at \$750,000 and liabilities of \$551,500. (AE H; AE I.)

Applicant's performance evaluations reflect he is a valued employee who meets expectations. (AE B.) He has received a number of performance based awards. (AE C.) Applicant's colleague indicated that Applicant is honest, loyal, and dependable. (AE L.)

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 useful 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(a), 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 national security eligibility 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, an “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.”

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 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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

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

Applicant was alleged to be indebted on nine debts totaling \$11,246. Five of those delinquent debts were not his, but belonged solely to his son, who bears the same name. Those debts (SOR ¶¶ 1.e through 1.i) are found in Applicant's favor, because they do not raise a security concern. However, Applicant's four outstanding debts set out in SOR ¶¶ 1.a through 1.d, do raise the above concerns. His largest debt, owed on the timeshare property, became delinquent in 2011 and the dog license fees became delinquent in 2013. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant and his wife completed financial counseling from a non-profit counseling service. Applicant paid three debts and initiated a good-faith effort to make payment arrangements on the fourth debt, but was told by the creditor that the account had been cancelled and had a zero balance due. Therefore, there are clear indications from the evidence he presented that his financial problems are under control. All of the SOR-listed debts are resolved. AG ¶¶ 20 (c) and 20 (d) have application to SOR ¶¶ 1.a through 1.d.

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(d):

- (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 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(d) were addressed under those guidelines, but some warrant additional comment.

Applicant has a distinguished history of working in the defense industry and is respected by his colleague, who wrote a letter on Applicant's behalf. He performs well at his job. He has completed credit counseling and now maintains a close watch on his credit report. Applicant will not purchase a timeshare property again. Applicant's son has resolved the delinquencies that were wrongly attributed to Applicant.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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 ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a through 1.i:	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 Goldstein
Administrative Judge