



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04318

Appearances

For Government: Brian Olmos, Esquire, Department Counsel
For Applicant: *Pro se*

02/23/2016

Decision

HOWE, Philip S., Administrative Judge:

On September 4, 2012, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). On April 22, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The action was taken under Executive Order 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 within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on May 27, 2015. Applicant requested his case be decided on the written record in lieu of a hearing.

On July 20, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 7, was provided to Applicant on August 18, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on October 22, 2015.

Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on November 21, 2015.

Department Counsel submitted seven Items in support of the SOR allegations. Item 4 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on November 1, 2012. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

I received the case assignment on February 4, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant denied the allegations in Subparagraphs 1.n, 1.p, and 1.s and admitted all the other 16 allegations. (Items 2-6)

Applicant owes \$18,293 in delinquent debts dating to 2010. They include 15 debts to collectors who seek payment for medical debts Applicant stated were incurred on behalf of his son's medical treatment (Subparagraphs 1.b to 1.m, 1.o, 1.q and 1.r). Applicant's Answer states his son was born with a particular condition that needed medical treatment. He contends the insurance company originally agreed to pay the medical debts but later refused to pay because the medical condition of Applicant's son was pre-existing. That medical treatment occurred in 2006. Applicant claims he could not work with the collector because it was rude and uncooperative in agreeing to an installment payment plan. These debts are unresolved. (Items 1, 2, 5-7)

Applicant's Answer states that any medical debts listed in the SOR are unpaid. Since those debts were incurred he has paid all subsequent medical bills. (Item 2)

Applicant denied the credit card debt in Subparagraph 1.n owed to a credit union for \$174. He claims this debt should have been resolved years ago. He was to dispute

it. He did not submit any documents to show it was disputed or resolved. It is unresolved. (Items 1, 2, 5-7)

Applicant denies the electric utility bill for \$222 is unpaid (Subparagraph 1.p). His Answer states it was paid in 2011. The credit reports show it was first reported as delinquent in 2011 and last had a payment made in 2013. Applicant did not submit any proof this debt was paid as he states and it appears on the July 20, 2015 credit report, the latest report in the File. This debt is unresolved. (Items 1, 2, 5-7)

Applicant owes \$71 to a bank on a credit card debt (Subparagraph 1.s). His Answer claims he is current on all his credit cards. He intended to dispute this debt. He did not submit any evidence that he does not owe this debt or has disputed it. This debt is unresolved. (Items 1, 2, 5-7)

Applicant filed Chapter 13 bankruptcy in October 2003 (Subparagraph 1.a). He was discharged in 2006 after making his payments to the Trustee. Applicant stated in his Answer that he filed when he was on active duty in the Air Force and he could not afford to support his family and his sister-in-law on his military pay. They could not live in on-base housing because of the six persons in his family. (Items 1, 2, 5-7)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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, the administrative judge applies 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.

According to 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. 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 at AG & 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2010 to the present, Applicant accumulated 18 delinquent debts, totaling \$18,293 that remain unpaid or unresolved. He also filed for Chapter 13 bankruptcy in 2003 after he incurred debts he could not afford to repay. Applicant has a history of unpaid debts and an inability to control his personal finances as demonstrated by the debts from 2010 and the 2003 bankruptcy.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only one mitigating condition might have partial applicability.

- (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.

AG ¶ 20 (b) would apply if his son's medical problems in 2006 were unanticipated. Yet his son was born with the condition and Applicant should have known it needed to be corrected at some point in time. He should also have checked with the medical insurance company before having the treatment performed on his son. Four of Applicant's delinquent debts are non-medical and the remaining 14 are medical related. He has had five years to resolve them and has not done so. Applicant failed to prove AG ¶ 20 (b) applied because he did not submit sufficient evidence of the conditions that he asserted were beyond his control, and that he acted responsibly in resolving his delinquent debts during the time the debts were accumulating.

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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken any action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past five years.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b to 1.s:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

PHILIP S. HOWE
Administrative Judge