



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04757

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

04/30/2015

Decision

HOWE, Philip S., Administrative Judge:

On January 24, 2014, Applicant submitted his electronic version of the Security Clearance Application (e-QIP). On December 2, 2014, the Department of Defense (DOD) issued to 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 December 19, 2014 (Item 2). Applicant explained how he became financially delinquent in 2009. Applicant requested his case be decided on the written record in lieu of a hearing.

On February 23, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on March 2, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on March 2, 2015. Applicant filed a Response to the FORM within the 30 day time allowed that would have expired on April 1, 2015. His Response is dated March 19, 2015. The Department Counsel stated he had no objection to the Response on April 2, 2015. I received the case assignment on April 9, 2015. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.¹

Findings of Fact

Applicant admitted the allegations in Subparagraphs 1.a through 1.e. He denied the allegation in Subparagraph 1.f. (Items 1, 2)

Applicant is 32 years old and is married since 2014. He has one child. He works in the aircraft industry for a defense contractor. Applicant has two associates' degrees. (Items 2, 3, Response)

Applicant has six delinquent debts totaling \$16,931. He attributes his financial delinquencies to the termination of a personal relationship in 2009 with a woman he intended to marry and with whom he shared his credit and finances. After the termination he was left with debts, lost his job and his fiancé's income, had to sell his house, allowed his two cars to be repossessed, and moved to a smaller residence while unemployed or working in a fast food restaurant. Applicant attributes his wife, whom he met after the end of his prior relationship, with helping him obtain an education and his current employment. (Item 2; Answer; Response)

When Applicant was a full-time student he listed his status as unemployed. Those periods were from January 2013 to January 2014; February 2012 to October 2012; December 2010 to May 2011; and February 2006 to May 2006, after he separated from the U.S. Navy. Applicant served in the Navy from 2001 to 2006. (Items 2, 3)

¹ Department Counsel submitted six Items in support of the SOR allegations. Item 6 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 between February 20 and March 25, 2014. 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.

Applicant owed a collector \$2,604 on a debt for an automobile his former fiancé' had (Subparagraph 1.a). This debt originated in 2008. The vehicle was repossessed. Applicant contended the debt will drop off his credit record in 2016 and he will not pay it. This debt is unresolved. (Items 2-5, Answer, Response)

Applicant's second delinquent debt is owed to a collector in the amount of \$2,184 (Subparagraph 1.b). Applicant admitted that this debt is for credit card purchases his former fiancé' made in 2009. Applicant said the debt will drop off his credit record in 2016. It is unresolved. (Items 2-5, Answer, Response)

The third delinquent debt is owed to a credit union for an automobile loan Applicant and his former fiancé owed in the amount of \$1,316 (Subparagraph 1.c). The debt started in 2008. Applicant turned the car over to the lender and it was sold. The owed amount is the balance. Applicant will not pay it. It is unresolved. (Items 2-5, Answer, Response)

The fourth delinquent debt is owed on a credit card to a collector in the amount of \$1,255 (Subparagraph 1.d). This debt started in 2009. Applicant contends this debt will drop off his credit report in 2016. It is unresolved. (Items 2-5, Answer, Response)

The fifth delinquent debt is owed to a collector in the amount of \$5,848 on a credit card (Subparagraph 1.e). This debt originated in 2008 and Applicant's Answer states it was charged off in 2009. Applicant contended he does not know what this debt is and it will drop off his credit record in 2016. He refused to pay it because the collector could not provide him with proof of the debt being owed by him. This debt is unresolved. (Items 2-5, Answer, Response)

The sixth and last delinquent debt owed is to a collector in the amount of \$3,724 (Subparagraph 1.f). This debt is based on credit card charges made when Applicant was living with his former fiancé. Applicant contended in his Answer that this debt is paid and resolved. He submitted a letter dated August 21, 2013, from the collector stating, "In the spirit of good customer service, we are closing the above referenced account." It also states that all collection efforts were stopped. The account number on the letter is not the same as listed in the SOR by the amount. Applicant's credit report shows a debt reported in April 2013 with high credit of \$2,309, and it was disputed and transferred from the bank that made the revolving account. Therefore, this letter does not pertain to the SOR listed delinquent account. This debt is unresolved. (Items 2-5, Answer, Response)

Applicant's Response contended he closed 15 accounts during the period of financial instability. He stated also that his unemployment and separation from his

former fiancé' were the causes of his financial problems. However, in the six years since his romantic breakup he has not made any effort to pay the six debts listed in the SOR. (Response)

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 concerns 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 2009 to the present, Applicant accumulated six delinquent debts totaling \$16,931 that remain unpaid or unresolved. These disqualifying conditions are established.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only two mitigating conditions might have potential 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20 (b) would apply if the loss of employment were shown by Applicant to have a substantial effect on his ability to repay his debts. In the past six years (72 months), Applicant has been unemployed 26 months. He attended school during those months and obtained two associates' degrees. His last period of unemployment ended in January 2014. He has had over a year to arrange repayment of these six listed debts. The second part of the mitigating condition is that he must have acted responsibly. Refusing to pay debts legally incurred is not responsible action. Therefore, he failed to meet his burden of proof on that issue.

Applicant contended in his Response that he acted in good-faith to pay his debts that came about in that period when he lived with his former fiancé. He stated that he paid other debts and only has the six debts listed in the SOR. But he did not show any efforts to repay these six debts. He did not submit persuasive proof of any other debts he claimed were paid and why they were paid and not these six debts listed in the SOR. Therefore, there is no evidence of good-faith efforts to resolve his debts. AG ¶ 20 (d) has no application.

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 these six 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. Additionally, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past six 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. I conclude the whole-person concept against Applicant.

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
Subparagraphs 1.a to 1.f:	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