



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-06594
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

02/23/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted insufficient documentary evidence to mitigate Guideline F security concerns. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On January 23, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a February 10, 2015, response to the SOR, Applicant admitted the six allegations raised as 1.a-1.f. He also requested a determination based on the written record in lieu of a hearing. On September 30, 2015, the Government issued a File of Relevant Material (FORM) that contained 10 attachments ("Items"). Applicant did not respond within the 30 days provided. The case was assigned to me on December 1, 2015. Based on my review of the case file and submissions, I find Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 53-year-old programmer who has worked for the same defense contractor since 2011. He earned a bachelor's degree in 1989. He has been married three times. He has no demonstrated financial obligations owed to his two former spouses. He married his third wife in 1999, but has been estranged from her since 2007. The couple has a child who lives with Applicant's wife. Applicant has been continuously employed for the past 15 years, except for the periods July 2010 – November 2010 and May 2011 – September 2011, when he was unemployed. There is no evidence he has received financial counseling. At issue are unfiled tax returns and approximately \$6,000 in delinquent debts.

In a July 2014 interview, Applicant told an interviewer he was barely able to pay his bills. In contrast, he wrote in his February 2015 response to the SOR that his financial outlook was improving, but he gave no specifics. In the January 2015 SOR, the following financial allegations were raised:

1.a – Failure to file Federal tax return for at least tax year 2013. Admitted. In response to the SOR, Applicant wrote that it was ultimately filed in December 2015, but no evidence of filing was offered.

1.b – Failure to file State tax return for at least tax year 2013. Admitted. In response to the SOR, Applicant wrote that it was ultimately filed in December 2015, but no evidence of filing was offered.

1.c – Delinquent medical account (\$3,098). Admitted. This debt is for outstanding dental services rendered in 2009. He wrote that he made arrangements to make payments on this account in the future, but no evidence of the plan or of any payments was offered.

1.d – Delinquent dental account (\$1,357). Admitted. This debt is for outstanding dental services rendered in 2010. He wrote that he made arrangements to make payments on this account in the future, but no evidence of the plan or of any payments was offered.

1.e – Delinquent lab account (\$890). Admitted. This debt is for outstanding lab services rendered in 2010. He wrote that he previously addressed this balance and wrote that the lab told him it had no record of a balance, but he provided no documentary evidence to that effect.

1.f – Delinquent music account (\$648). Admitted. Applicant wrote that he previously satisfied this obligation through a repayment plan, but provided no documentary evidence as to that effect. A recent attempt to contact the entity was unsuccessful.

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 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 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. Likewise, I have not drawn 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 applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant failed to timely file Federal and state tax returns for at least one year, and has neglected about \$6,000 in delinquent debt. This is sufficient to invoke three of the financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations, and

AG ¶ 19(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Five conditions could mitigate these finance-related security concerns:

AG ¶ 20(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;

AG ¶ 20(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(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 provided little documentary information with regard to the approximately \$6,000 in delinquent debts at issue. As for the tax returns, he wrote that they ultimately had been filed, but provided no documentary evidence supporting that assertion. As for his delinquent debts, which appear to be related to medical services and music, Applicant provided no information regarding their origin. There is no evidence he has received financial counseling. While he wrote that they had been addressed or were being addressed, he provided no documentary evidence supporting these contentions. Lacking more, none of the financial considerations mitigating conditions apply.

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 adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on 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 incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 53-year-old programmer who has worked for the same defense contractor since 2011. He earned a bachelor's degree in 1989. He has been married to his current wife since 1999, but the two are currently estranged. They have one child. Applicant has been continuously employed for the past 15 years, except for two five month periods in 2010 and 2011, respectively. Applicant provided no information indicating that his debts are related to his estrangement, a period of unemployment, or medical services. Their origin is unknown. Similarly, although Applicant wrote that his delinquent debts had been addressed, he provided no documentary evidence to that effect.

Also at issue are unfiled Federal and state tax returns. Applicant wrote that they were subsequently filed. He provided no documentary evidence, however, supporting this assertion. In short, Applicant shared no new and relevant information about his taxes, debts, or finances, and offered no supporting documentation that would reflect any attempts he might have made to address them. The burden in these proceedings is on the applicant to provide evidence rebutting, refuting, or otherwise challenging documented evidence of delinquent debt or unfiled tax returns. With only scant evidence of record regarding Applicant's situation, financial considerations security concerns remain unmitigated.

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:	AGAINST APPLICANT
Subparagraphs 1.a-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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge