



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



In the matter of:)
)
) ISCR Case: 14-06949
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Strzelczyk, Esquire, Department Counsel
For Applicant: *Pro se*

02/29/2016

Decision

DAM, Shari, Administrative Judge:

Applicant provided proof that he timely filed his 2013 Federal and state income tax returns and paid all taxes for that year. He did not provide sufficient proof that he resolved an \$86,000 home equity loan which became delinquent in 2011. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On June 5, 2014, Applicant submitted a security clearance application (SF-86). On May 20, 2015, the Department of Defense (DOD) 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on August 14, 2015 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On September 28, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on September 29, 2015, and received by him on October 10, 2015. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. He did not submit any additional information or file objections to the Government's Items; hence, Items 1 through 5 are admitted into evidence. DOHA assigned the case to me on December 18, 2015.

Findings of Fact

In his Answer, Applicant denied the allegations contained in SOR ¶¶ 1.a, 1.b, 1.c, and 1.d, and admitted the allegation in ¶ 1.e. (Item 1.)

Applicant is 60 years old and separated from his third wife. He has two children ages 17 and 14. He has worked for his current employer since 1997 and held a security clearance for most of that time. He is a quality engineer. (Item 2.)

The SOR alleged that Applicant failed to file his 2013 Federal and state income tax returns; and that he was indebted \$2,000 to the Internal Revenue Service (IRS) and owed \$10,000 to a state government for that year. Applicant submitted a document confirming that he received a filing extension to October 15, 2014, for 2013. He filed his Federal and state returns on October 15, 2014, electronically. At that time he paid \$2,030 to the IRS and received a tax refund of \$485 from the state. After submitting the Federal return the IRS notified him that he owed an additional \$30.84, which he paid in early November 2014. (Item 1: Answer.) All matters related to the filing of his 2013 income taxes were resolved prior to the issuance of the SOR in May 2015 (SOR ¶¶ 1.a, 1. b, 1.c, and 1.d.).

Based on credit bureau reports (CBRs) from June 2014 and September 2015, the SOR alleged that Applicant also has a delinquent debt for \$86,599 owed to a bank for a home equity loan on real estate that went into foreclosure in July 2011. (Items 4, 5.) Applicant stated that the bank reneged on the agreement he had negotiated shortly after he agreed to it in 2011. In March 2012 he faxed an inquiry to the bank for certain information. In May 2012 the bank notified him that the bank was reviewing the matter. In April 2015 the bank notified Applicant that it would agree to settle the debt for \$13,356 and requested that he notify the bank within 15 days of his decision. In his August 2015 Answer, Applicant noted that he was continuing to negotiate with the bank. (Item 1: Answer.) The case file does not contain any information as to whether Applicant resolved the debt. This debt is unresolved (SOR ¶ 1. e).

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 (AG) 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.

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 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

The evidence regarding Applicant's 2013 Federal and State income tax returns and taxes owed, does not support a disqualifying condition under this guideline. Applicant received a filing extension for the year 2013. He complied with that deadline and paid the required taxes to the IRS, but for \$30, and received a refund from his state. However, Applicant has an \$86,599 delinquent home equity loan from 2011, which he has been unwilling or unable to resolve. This raises a security concern under the above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems:

- (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

¹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

doubt on the individual's current reliability, trustworthiness, or good judgment;

(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;

(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 delinquent debt for \$86,599 has been ongoing since 2011 and raises questions about his judgment and reliability. The evidence does not establish mitigation under AG ¶ 20(a). He provided some evidence that the debt may have been caused by a circumstance beyond his control, but he did not elaborate. He provided limited documentation indicating that he attempted to act responsibly after learning of the foreclosure in July 2011, but he did not document any further actions after receiving the bank's May 2012 correspondence or the bank's offer in April 2015. AG ¶ 20(b) provides limited mitigation. He presented no evidence of financial counseling or documentation that there are clear indications that his financial problem is under control or being resolved in good faith. He did not provide evidence that he disputed the legitimacy of the delinquent debt. Accordingly, the record is insufficient to establish mitigation under AG ¶¶ 20(c), (d) or (e).

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 is a mature adult, who is responsible for his financial obligations. In July 2011 the bank determined that he was in default of a home equity loan. After requesting information from the bank regarding its adverse decision, the bank informed him in May 2012 that it was reviewing the matter. There is no evidence of any activity on this debt from May 2012 to April 2015, at which time the bank offered to settle the debt for about \$13,000 and requested a prompt response from Applicant. In his August 2015 Answer, Applicant stated that he continued to negotiate with the bank about its settlement offer. This debt has been delinquent for almost four years and there is no evidence that Applicant is closer to a resolution of his financial obligation or why he did not accept the previous offer. He provided no evidence of financial or budget counseling, or that he is currently managing his other finances in a responsible manner. Overall, the record evidence leaves me with doubts as to Applicant's judgment, reliability, and present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial problems.

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
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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.

SHARI DAM
Administrative Judge