



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



In the matter of:)
)
) ISCR Case No. 14-07018
)
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

June 8, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was indebted to five creditors in the total approximate amount of \$9,111. Applicant presented evidence he resolved only one of his five delinquent accounts. The remaining four unresolved accounts total \$9,028. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on May 6, 2014. (Item 2.) On August 27, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

(Directive); and the adjudicative guidelines that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR (Answer), dated September 4, 2015 (Item 1), and requested that his case be decided by an administrative judge on the written record without a hearing. Department Counsel submitted the Government's written case on December 11, 2015, containing 5 Items.¹ A complete copy of the File of Relevant Material (FORM) was received by Applicant on December 24, 2015, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on December 24, 2015. He submitted nine pages of additional material in response to the FORM (Response) by the due date of January 23, 2016. Department Counsel had no objection to the evidence in Applicant's Response, and it was admitted. I received the case assignment on April 1, 2016.

Findings of Fact

Applicant is 30 years old, and has worked for a defense contractor since May 2014. He is a college graduate. He reported he is single and has no children. Prior to his current employment, he was unemployed from June 2013 to May 2014. (Item 2.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR alleged that Applicant is delinquent on five debts in the total approximate amount of \$9,111. In his Answer, Applicant failed to specifically admit or deny the debts identified in SOR ¶¶ 1.a through 1.e, although he offered clarifications on their statuses. As a result, Applicant is deemed to have denied all of the debts identified on the SOR. Applicant's delinquent accounts appeared on his credit reports dated May 13, 2014; and December 1, 2014. (GE 4; GE 5.)

Applicant was indebted on a medical account in the amount of \$83. This debt had been past due since at least May 2011. (Item 5.) However, Applicant resolved this debt on June 14, 2011, as documented in a receipt from this creditor. This debt is resolved. (Response.)

¹Item 3 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 in July 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.

A state tax lien in the amount of \$3,848 was filed against Applicant in 2010. He presented documentation showing that the hold against his driver's license, which he averred was related to the lien, was released on June 14, 2013. Apparently, another hold against his license was issued against Applicant for the same debt, because he presented a second letter, dated June 25, 2015, documenting the hold on Applicant's driver's license had again been released. Applicant's Response further reflects that Applicant had entered into an installment agreement to resolve this debt through monthly payments of \$130.32 as of March 3, 2014. However, Applicant failed to document any payments after March 2014. Applicant failed to meet his burden to show that he has resolved or is resolving this debt. (Response.)

Applicant is indebted on a credit card in the amount of \$773. This debt has been delinquent since November 2014. (Item 5.) Applicant presented an offer from the account holder to settle this debt for six payments of \$64.48. However, Applicant failed to present documentation to show he made any payments to this creditor. This debt is unresolved.

Applicant is indebted on a medical debt in the amount of \$254. This debt has been delinquent since September 2013. (Item 4.) Applicant claimed that this debt was paid by his insurance company, but failed to produce evidence to support his claim. (Item 1.) This debt is unresolved.

Applicant is indebted to a collection agent for a bank in the amount of \$4,153. This debt has been delinquent since at least April 2014. (Item 4.) Applicant presented a demand for payment from an attorney representing the creditor, but did not provide evidence of payment. (Response.) This debt is unresolved.

The record lacks evidence concerning the quality of Applicant's professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. No character witnesses provided statements describing his judgment, trustworthiness, integrity, 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 (DCs) and mitigating conditions (MCs), 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

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 under 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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant has a history of delinquent debt. In 2010 he incurred a state tax delinquency that remains unresolved. Additionally, he is delinquent on three other unresolved accounts. His ongoing pattern of delinquent debt, and history of inability or unwillingness to pay his lawful debts, raises security concerns under DCs 19(a) and (c), 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 difficulties:

- (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;
- (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 failed to produce sufficient evidence that he has addressed four of his delinquencies. He offered little evidence from which to establish a track record of debt resolution. While the record shows evidence of unemployment from June 2013 to May 2014, a condition beyond his control, he failed to show that he acted responsibly under such circumstances after accepting his current job in 2014. He did not produce evidence that he received financial counseling. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning an alleged debt, and Applicant failed to

provide such evidence. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions.

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 pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His SOR-listed delinquent debts arose over the past five years and all but one appear to remain unresolved. He offered insufficient evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of his life to offset resulting security concerns. The potential for pressure, coercion, and duress from his financial situation remains undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his 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 through 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.

Jennifer I. Goldstein
Administrative Judge