



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



In the matter of:)
)
) ISCR Case: 15-01783
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esquire, Department Counsel
For Applicant: *Pro se*

06/27/2016

Decision

DAM, Shari, Administrative Judge:

Applicant remains indebted to five creditors for debts that accumulated between 2009 and 2012, in an approximate amount of \$28,850. 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 September 27, 2012, Applicant submitted a security clearance application (SF-86). On September 18, 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 October 22, 2015 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On December 8, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on December 9, 2015, and received by him on December 22, 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 additional information or file objections to the Government's FORM by the January 21, 2016 deadline. Hence, Items 1 through 6 are admitted into evidence. DOHA assigned the case to me on April 22, 2016.

Findings of Fact

In his answer, Applicant admitted the ten medical delinquent debts alleged in the SOR, including one judgment, and his delinquent student loan. His admissions to the 11 allegations are incorporated into these findings of fact.

Applicant is 26 years old and unmarried. Since September 2012 he has worked as a machinist for a Federal contractor. Prior to this position, he held several positions with different private employers, and experienced periods of unemployment from June 2009 to June 2010. (Item 2.)

Based on credit bureau reports (CBRs) from October 2012, January 2015, and December 2015, the SOR alleged 11 delinquent debts, which totaled \$30,127, and included a judgment. The debts became delinquent between 2009 and 2012. (Items 4, 5, 6.) In his Answer, he provided evidence that he paid six SOR-alleged debts: 1.e for \$180; 1.f for \$175; 1.g for \$161; 1.h for \$17; 1.i for a \$610 judgment; and 1.j for \$134. These payments totaled \$1,277. He stated that he was making payments on the largest debts, alleged in 1.a for \$10,365 and 1.k for \$15,804, but did not provide documentary proof. (Item 1.)

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(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.

Applicant has a history of delinquent debts. From 2009 to 2012, he accumulated 11 delinquent accounts totaling over \$30,000. That ongoing pattern of delinquent debts, and history of inability or unwillingness to pay debts, raise security concerns under the above disqualifying conditions, and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

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

- (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 provided insufficient evidence that circumstances beyond his control contributed to the delinquent debts or that he attempted to responsibly manage the debts while they were accumulating. AG ¶ 20(b) does not provide mitigation of the security concerns. There is no evidence that he participated in financial counseling or that his financial problems are under control. Thus, he failed to establish mitigation under AG ¶ 20(c). He submitted evidence that he resolved six of the eleven debts

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

indicating a good-faith effort to repay those debts. He did not corroborate his statements that he is paying the two largest debts, which total \$26,169. AG ¶ 20(d) applies to the six resolved debts, but not the remaining five. Applicant did not dispute any of the alleged debts; thus, AG ¶ 20(e) does not 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 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 choices and conduct that underlie the security concerns expressed in the SOR. The alleged delinquent debts arose between 2009 and 2012. He resolved 6 of the 11 debts. He said he is paying the largest two debts, but did not submit documentation of those payments, despite being notified in the FORM of the absence of evidence and given an opportunity to submit corroborating information. He did not present evidence of credit or financial counseling, a budget, or a plan for addressing the remaining debts. The likelihood that similar problems will continue remains a security issue, such that the potential for pressure, coercion, or duress is undiminished. Overall, the record evidence leaves me with doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He did not meet his burden to 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
Subparagraphs 1.a through 1.d:	Against Applicant
Subparagraphs 1.e through 1.j:	For Applicant
Subparagraph 1.k:	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