



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



In the matter of:)
)
) ISCR Case No. 11-13994
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel

For Applicant: *Pro se*

06/10/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and File of Relevant Material (FORM), I conclude that Applicant has not mitigated the security concerns raised under the financial considerations guideline. Accordingly, his request for a security clearance is denied.

Statement of the Case

On February 8, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) (Item 1), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DoD directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) implemented by the DoD on September 1, 2006. The SOR listed security concerns addressed in the Directive under Guideline F (Financial

Considerations) of the AG. Applicant's Answer to the SOR was undated but was received by the Defense Office of Hearings and Appeals (DOHA) on February 22, 2013. Applicant admitted all the allegations, and requested a decision without a hearing. (Item 4)

Department Counsel submitted a FORM.¹ in support of the Government's preliminary decision to deny Applicant's request. The FORM was forwarded to Applicant on April 30, 2013, and he received it on May 8, 2013. He was given 30 days from the date he received the FORM to file a response. Applicant timely submitted a response that was undated but appears from the text to have been created on May 7, 2013. The case was assigned to me on June 4, 2014.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, the FORM, and Applicant's response to the SOR, I make the following additional findings of fact.

Applicant is a 39-year-old high school graduate. He is not married, and does not have children. From 2001 to 2009, he was employed by a defense contractor as a switchboard operator. In May 2009, when the company operating the contract changed, Applicant retained the same position. In his August 2011 security clearance application, he reported receiving a secret security clearance in 2003. (Item 5)

In his September 2011 security interview, Applicant explained that when the new contractor took over his contract in 2009, his pay rate was reduced from \$16 to \$10 per hour. However, he stated that he was able to meet his current expenses, and to pay some past-due debts. More than one year later, in his December 2012 interrogatory response, he stated, "I do not have enough funds to pay off bills/debts that I currently own [*sic*] and then pay the bills that I need to pay to live (food, rent, gas, light, etc.)." In his February 2013 Answer, he noted that his current contract "only pays me enough to get by." He stated that, nevertheless, he is responsible and is paying his bills timely. He commented, "True, I do have debt, but I can't change that." He also stated, "I am sure most of the debt on my credit should be written off and I will check with those soon." (Items 4, 6)

In his May 2013 Response to the Government's FORM, Applicant said he is "getting better with paying my bills" and is trying not to incur additional debts. Applicant described contacts he made with the creditors in May 2013. He stated he has contacted a debt relief company about resolving three debts (allegations 1.a, 1.d, and 1.e). He noted the company required \$250 per month for three years, which he decided is more than he can afford. He also stated that "I don't even know if I will have a job in a few

¹ See Directive, Enclosure 3, Section E3.1.7. The FORM included eight documents (Items 1 - 8) proffered in support of the Government's case.

months.” Applicant did not explain about why he thought he might become unemployed. (Response)

In his December 2012 personal financial statement, Applicant estimated that his net monthly income is \$2,245 and estimated his expenses at \$1,760. In addition, he listed debt payments of \$489. When his combined expenses and debt payments (\$2,249) are subtracted from his income, he has a negative monthly remainder of \$4. (Item 6) However, in his May 2013 Response, he provided a different estimate. He listed monthly expenses totaling \$1,555. He also listed an ongoing payment of \$80, and a \$200 per month payment for his computer, which he completed paying off in May 2013. The newer PFS does not list \$300 per month for life insurance; it is not clear if he no longer has this expense, or he forgot to include it in his 2013 estimate. He also did not note whether his income had changed since his PFS of December 2012. (Item 6; Response)

Applicant admits the 12 debts alleged in the SOR, which are currently delinquent, charged off, or in collection status. These debts, which total \$18,383, appear in Applicant's credit reports of August 2011 and December 2012.

1.a, 1.g - Retail purchases (\$3,337) Applicant paid timely on a furniture account (1.a, \$2,391) until his drop in income in 2009. In his May 2013 Response, Applicant stated he contacted the creditor in May. The creditor asked him to pay \$100 per month, which Applicant could not afford. He plans to try to pay \$25 or \$50 monthly, but did not know if the creditor will accept it. Applicant stated in his security interview that he did not recognize the creditor at ¶1.g (**\$946**), but in his Answer he stated that it related to a computer purchase in the 1990s, which he failed to pay after losing his job. In his Response, Applicant noted that the debt at ¶1.g “has been charged off,” with no further comment. (Items 4, 6; Response)

1.b - Cable account (\$209) – Applicant discontinued his account because he was dissatisfied with the service. He spoke with the creditor on May 7, 2013, and was informed that the correct balance was \$64.41. He planned to start payments on May 30, 2013 of \$25 or \$35 every two weeks. (Items 4, 6; Response)

1.c - credit card debt (\$446) - Applicant believes a friend opened this account without his permission. There is no evidence he disputed the debt with the credit agencies. In his Response, Applicant noted that the debt at ¶1.c “has been charged off,” with no further comment. (Items 4, 6; Response)

1.d - Car loan (\$2,942) - Applicant bought a car in 2011 for \$8,067. Shortly thereafter, it broke down. The lender repossessed it a few months after Applicant purchased it. He believes the loan balance was \$6,200, and that after the car was sold, he owed about \$2,200. (Items 4, 6; Response)

1.e – Car loan (\$5,351) – Applicant bought a car in 2006 for \$14,000 and made timely payments. However, he then gave the car to his sister, who failed to make the

payments. The car was repossessed in about 2009. In his 2011 security interview, Applicant stated he would contact the creditor to set up a payment plan. In his SOR Answer, he said the lender informed him the car was charged off. (Items 4, 6; Response)

1.f, 1.k - Medical debts (\$559) – Applicant stated the debt at ¶1.f (\$213) is for unpaid medical expenses related to a car accident. He does not have medical insurance. The unpaid debt at ¶ 1.k (\$346) is for his treatment for the flu. In his 2013 Response, in relation to his medical debts, Applicant stated he “will have to call and try to come up with a payment plan.” (Item 4; Response)

1.h, 1.l - Cell phone accounts (\$223) – Applicant claims his roommate opened the account at ¶ 1.h (\$101) without his permission. The evidence does not indicate that he disputed this debt with the credit agencies. In regard to the cell phone account at ¶1.l (\$122), Applicant stated, “If I want to return to [company] I would have to pay balance.” In his 2013 Response, Applicant noted both balances are small, and he might be able to make small payments. He has not contacted either creditor. (Items 4, 6; Response)

1.i, 1.j - Student loans (\$5,316) – Applicant no longer attends school, and his student loans became due because they were no longer deferred. In his December 2012 interrogatory response, Applicant stated, “My [student] loans are on with [sic] a consolidation service. I have called and they want me to pay more than I can so payments have not been made.” (Item 6) However, his February 2013 Answer appears to indicate that his pay is being garnished by the lender. Applicant stated,

These accounts are with a consliated [sic] company. They were on forbearance but since I am not in school right now I am supposed to pay. I was paying the IRS (Department of Education) they and I agreed to have wages taken out of account to bring account current. I have applied for economic hardships with [company]. (Item 4)

In his May 2013 Response, Applicant stated the loans are now deferred “due to economic hardships.” (Response)

At his 2011 security interview, Applicant stated he would contact the creditors for the accounts he disputes and determine if they are valid debts. There is no evidence he filed disputes with the credit agencies. He also planned to set up payment plans with small monthly payments for the other delinquent debts. In his May 2013 Response, he stated that he is “currently trying to work with [credit repair company] to fix my credit score that my credit report has due to my problems with my debt due to my younger years.” He gave no additional information about working with the credit repair company. (Items 5, 6; Response)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.² Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest³ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to applicant to refute, extenuate or mitigate the Government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁴ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as her or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁵

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

Failure or inability to live within one's means, satisfy debts,
and meet financial obligations may indicate poor self-control,

² Directive. 6.3.

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴ See *Egan*, 484 U.S. at 528, 531.

⁵ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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 over-extended is at risk of having to engage in illegal acts to generate funds. . . .

Applicant has a history of delinquent debts, because his credit report shows that his delinquencies began several years ago. As of the date of the SOR, his past-due debts totaled more than \$18,000. His history of failing to meet his financial obligations supports application of disqualifying conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). His delinquencies appear to stem from an inability rather than a unwillingness to pay his debts.

Under AG ¶ 20, the following conditions can potentially mitigate security concerns:

(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; and

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

Applicant's failure to meet his financial obligations did not occur in the distant past, because his debts are currently delinquent. His unresolved financial situation casts doubt on his reliability, and AG ¶ 20(a) cannot be applied.

In 2009, Applicant's pay rate was reduced from \$16 per hour to \$10 per hour when a new company assumed control of his contract. However, there is little evidence to show if Applicant acted responsibly under the circumstances. Applicant receives limited mitigation under AG ¶ 20(b).

Although Applicant said in 2011 that he would formally dispute some of his debts, and would work on setting up payment plans, the file contains no evidence that he took

such actions at that time, or in 2012. In 2013, after receiving the Government's FORM, Applicant states that he contacted a credit repair agency. However, he provided no evidence supporting that claim. He also stated that he contacted a debt relief company, but could not afford the payment they required. He provided no evidence of his contact with this company. If he did contact such agencies, his efforts are quite recent. He has no substantiated payment plans in place, and his debts are not under control. AG ¶¶ 20(c) and (d) cannot be applied.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

Over the past several years, Applicant has accrued more than \$18,000 in delinquent debt. He has been aware that delinquent debts are a security concern since at least 2011, when he completed his security clearance application. Applicant stated in 2011 that he would verify the debts he disputed. However, Applicant failed to make this effort, which would have indicated the appropriate concern about his financial obligations.

Applicant does not have a plan in place to deal with his delinquencies. He contacted some creditors in May 2013, after he received the Government's FORM. He made contact with a debt-relief firm within the past two months, but could not afford to retain it. His efforts to deal with his debts have been too recent to reflect a good-faith desire to resolve them. Applicant has not paid any SOR debts, and has no plan in place to do so. Applicants are not required to be debt-free; however, they are expected to develop a plan to resolve their debts, and provide evidence that they are implementing that plan. The Government's doubts about Applicant's suitability to hold a security clearance remain, and must be resolved in favor of the national interest.⁶

⁶ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.l	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 allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge