



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



In the matter of:)	
)	
)	ISCR Case: 14-00207
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro se*

10/27/2014

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of accumulating delinquent debt, as documented prior to 2001 and starting again prior to 2010. He failed to provide evidence that he has paid or resolved any of the alleged delinquent debts totaling more than \$37,000. 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 3, 2013, Applicant submitted a security clearance application (SF-86) for a reinvestigation. On March 13, 2014, 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; Department of Defense 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 April 4, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) On June 26, 2014, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was provided to Applicant on June 26, 2014, 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 July 7, 2014, and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA). He provided no additional information in response to the FORM within the 30-day period. DOHA assigned the case to me on October 9, 2014.

Findings of Fact

In his answer to the SOR, Applicant admitted the ten allegations contained in Paragraph 1 of the SOR. (Item 3.) Those admissions are incorporated into these findings.

Applicant is 48 years old and works as a senior engineer for a defense contractor. He has worked for this defense contractor since November 2004, and held a security clearance from July 2006 to the present. Prior to this position he worked for another defense contractor from September 1998 to November 2001 at which time he was laid off. He remained unemployed until October 2002 when he became an instructor for a private company. He worked for that company up to November 2004 when he started his current position. He owns a hypnosis business in which he works part time. (Item 4.)

Applicant attributed his financial problems to several factors. He and his girlfriend purchased a house in 2007, that later required significant repairs. In March 2009 his girlfriend lost her job and has been unemployed since. They replaced both of their cars, which broke down. He financially supports two children from his previous marriage.

Applicant's history of financial difficulties began prior to 2001. In January 2001 he signed a statement for the Government addressing the status of numerous delinquent debts, which included old credit card debts, department stores' debts, and educational loans. (GE 6.) Based on a credit bureau report (CBR) dated September 7, 2013, the SOR alleged ten presently delinquent debts totaling \$37,367 and dating back to 2010. They included credit card debts and an educational loan of \$17,484. (Item 5.) Applicant did not provide proof that he paid or resolved any of the ten debts.

There is no evidence that Applicant obtained credit counseling or sought assistance with a debt consolidation company within the past couple years. He did not provide a budget or a plan to resolve the delinquent debts. He submitted no evidence concerning the quality of his professional performance, the level of responsibility his

duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He provided no character references describing his judgment, trustworthiness, integrity, or reliability.

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.

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 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.

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's most recent delinquent debts began accumulating prior to 2010. He has been unable or unwilling to satisfy or resolve them over the past four years. The evidence raises both security concerns, thereby shifting 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's delinquent debts, which are listed on the SOR, began accumulating prior to 2010. All of them continue to be unresolved. Because he failed to address any of the debts, he did not demonstrate that such problems are unlikely to continue or recur. His reliability and trustworthiness in managing delinquent debts remain of concern. The evidence does not support the application of AG ¶ 20(a).

Applicant provided some evidence that his financial problems arose as a result of unanticipated house repairs and his girlfriend's loss of employment in 2009. Those were circumstances beyond his control. However, he failed to provide evidence that he acted responsibly under the circumstances, or that he attempted to resolve the debts while they were accumulating over the past four years. AG ¶ 20(b) has limited application.

Applicant has not participated in financial or credit counseling, and there are no clear indications that his delinquent debts are under control; thus, AG ¶ 20(c) has no application. He did not provide documentation to demonstrate that he has made a good-faith effort to resolve any of the ten SOR-listed debts. Hence, AG ¶ 20(d) has no application. There is no evidence that Applicant had a reasonable basis to dispute any delinquent debt and successfully resolved it through the dispute process. AG ¶ 20(e) has no application.

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 48 years old. He has been employed with defense contractors from September 1998 to November 2001, and from November 2004 to the present. He was unemployed in the interim for about 11 months. This is the second time the Federal government has placed him on notice that delinquent debts could cause him employment problems. He previously acknowledged a number of delinquent debts that had accumulated prior to 2001. Recently, he admitted responsibility for ten debts that became delinquent in 2010 or after. There is no evidence that he paid, is paying, or resolved any of these ten debts totaling over \$37,000. He did not present a budget or plan for addressing his debts. While some of the debts arose from unexpected circumstances, he provided no evidence that he has taken steps to resolve his financial obligations, despite consistent employment since November 2004. The likelihood that similar problems will continue is significant; and the potential for pressure, coercion, or duress is undiminished.

Overall, the record evidence leaves me with substantial 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.j:	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