



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



In the matter of:)	
)	
)	ISCR Case No. 12-04476
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

03/24/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On May 29, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated January 23, 2015.¹ Applicant received the FORM on February 2, 2015. He submitted additional information for the record. (Applicant EX 1) I received the case assignment on March 20, 2015. Based on a review of the case file, I find Applicant has not mitigated the security concerns raised. Eligibility for a clearance is denied.

¹The Government submitted nine items in support of its case.

Findings of Fact

In his answer to the SOR, Applicant denied the allegations under Guideline F, ¶¶ 1.a-1.j with explanations. (Item 4) Applicant noted some debts were paid.

Applicant is 54 years old. He obtained an undergraduate degree in 2011. (Item 5) Applicant served in the U.S. Navy from 1978 until 1998 and received an Honorable Discharge. He is an employee of a defense contractor. Applicant is divorced. He has two children. He has been employed with his current employer since 2005. Applicant's security clearance application reflects that he has held a security clearance since 2006. On December 7, 2011, he completed a security clearance application. (Item 5)

The SOR alleges ten delinquent debts totaling approximately \$100,375, including seven student loans, delinquent credit card accounts and a delinquent gas account. (Item 1) Credit reports confirm the debts. (Items 7 through 9) As to SOR allegations ¶ 1.a and 1.b, Applicant asserts that he paid the two charged-off accounts in 2005, and that he had provided proof of payment with an interrogatory response. (Item 4 and 6) The proof of payment could not be substantiated in the record.

In February 2012, during an investigative interview, Applicant explained that he used Paytrust to pay all bills for one year. He did not understand that he had to renew the agreement with the bill-paying company for the next year. Thus, several accounts were not paid. He also believed mistakenly his mortgage was being paid. He acknowledged receiving correspondence from the bank, but did not open the envelopes. Later, he explained that when he opened the mail, he learned that he owed about \$12,000 to the bank for missed mortgage payments. He claims that he paid \$5,000 in two lump sums in December 2011 and January 2012. He believes that he is now current with the account. (Item 6) At that time, he was confronted with at least four other delinquent debts. Applicant noted that his daughter, an authorized user on credit card accounts, overspent on his credit cards. He emphasized that he would take a proactive role in the future in handling his finances.

When Applicant answered the 2013 DOHA interrogatories, he admitted the debts in 1.a and 1.b, but stated that there were paid in full. He noted that payment arrangements were made for the other delinquent accounts. (Item 8) There is no documentation in the record showing what Applicant paid and to whom.²

As to the allegations in 1.c-1.e, for past-due student loans in the amount of \$1,239; \$1,635; and \$1,710, Applicant's current credit report shows that the loans are currently deferred. These loans are documented to be deferred, and accordingly, are not delinquent accounts. They are not reported as such in the latest credit report. The current credit report shows a total of about \$62,504 in delinquent debt. (Item 9)

²The file contains some document file notes dated February 10, 2006, with some payments, but it is not clear for what accounts.

In his 2015 response to the FORM, Applicant proffered that he must take action to have his credit report “cleared.” He believes that the credit reports show erroneous information. He realizes that he had financial issues in the past due to lack of detail and not staying abreast of the bill-paying company procedures. He maintained that his credit cards are being paid monthly and are not delinquent. He is adamant the allegation in SOR ¶ 1.j was settled in 2005. He also stated that the other educational loans listed in the SOR 1.d to 1.i are current and that he pays \$900 monthly. Applicant noted that other credit cards are not delinquent. He states that he does not understand why the credit reports do not reflect the correct information. Each credit report, however reflected more delinquent debt. Applicant stated that his credit history is in no way reflective of his character. He stated that he will seek financial counseling within the next 30 days. He maintained that he has held a security clearance for 37 years. However, Applicant did not supplement the record with any evidence or documentation of payments or formal counseling.

Applicant listed his total monthly net income as \$5,430 and his net remainder as \$2,729. As part of his assets he listed real estate, savings, stocks, and a car/boat that totaled \$110,000. Applicant’s budget reflects payments on two non SOR credit card accounts and an education loan.

Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by

Department Counsel. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a security clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.”

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

Applicant's latest credit report establishes delinquent SOR debts in the amount of approximately \$64,000. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." "An unpaid debt is a continuing course of conduct for the purposes of DOHA adjudications." ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant still has unresolved delinquent debt. The delinquent obligations remain despite the fact that Applicant promised to pay them after his 2013 interrogatory assurances. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) does not apply.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant's financial difficulties occurred because he did not pay attention to his finances. He acknowledged that he was not mindful. He has been employed for many years without any breaks in employment. He did not monitor his bank accounts or his payments to credit accounts. He did not act responsibly under the circumstances. Applicant has been aware of the debts since his 2012 investigative interview and stated that he intended to act to resolve his delinquent debts. Despite the claim that he paid several debts listed on the SOR and is now current with his accounts, he has not provided any evidence for the record.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant presented some information concerning the fact that three one student loans are in deferment. However, while he claims that he made payments to other accounts, there is no documentation. He did not present evidence that he received financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. Given the ultimate evidentiary burden imposed on Applicant, I find that there are remaining doubts about his judgment and responsibility in this case.

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 54 years old. He served in the U.S. Navy receiving an Honorable Discharge. He has worked for many years with a security clearance. He earns a good salary. He has obtained a degree to further his education. He noted that he did not monitor his financial affairs in the past. He intended to take a proactive role in his financial affairs in 2012. However, a 2015 credit report lists more debt than his earlier credit report. He probably has paid some debts and certain student loans are in forbearance, but it is impossible from the record to give Applicant credit for mitigation under the financial guideline. The listed delinquent accounts have existed over a long period.

Applicant relied on the written record and did not have a hearing. He responded to the FORM with a narrative, but he did not provide any additional documentation to support claims of payments. Based on the facts in the record, he has not met his burden of proof. I have doubts about his judgment and responsibility. Applicant has not mitigated the security concerns under the financial considerations guideline.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.e:	For Applicant
Subparagraphs 1.f-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 a eligibility for a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge