



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



In the matter of:

ISCR Case No. 12-04487

Applicant for Security Clearance

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel

For Applicant: *Pro se*

09/19/2014

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concern. Eligibility for access to classified information is denied.

Statement of the Case

On March 3, 2014, the Department of Defense Consolidated Adjudication Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD CAF acted under Executive Order (EO) 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 (AG).

Applicant answered the SOR with an undated response, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on April 28, 2014. The FORM was mailed to Applicant

who received it on May 7, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any further information. The case was assigned to me on September 11, 2014.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 28 years old. He is married and has two stepchildren. He has worked for his current employer, a defense contractor, since December 2011. He possesses a high school diploma. He has no military service. He had periods of unemployment from December 2002 to December 2004 and from April 2008 to December 2008.¹

The SOR lists 20 delinquent debts totaling \$15,284, the majority of which consist of medical debts (11 debts totaling \$11,248). The remaining obligations are consumer debts, credit card debts, and telecommunications debts. These debts are supported by credit reports from February 2012 and September 2013. Applicant did not provide any documentation supporting payment of the debts or establishing any payment plans. He did provide evidence that he paid a judgment against him that resulted in a satisfaction of judgment in March 2013. The judgment was not alleged in the SOR.²

Applicant's financial difficulties resulted from being laid off a job in April 2008 and being fired from a job in December 2006 because of a driving under the influence of alcohol (DUI) arrest. He lost insurance medical insurance coverage and incurred the listed medical bills during this time. He also admitted that he incurred some of the remaining debt by living beyond his means. He has contacted the source of the medical debts and has been offered a payment plan, but Applicant stated he cannot afford the plan. He has not sought financial counseling. His personal financial statement indicated he has a \$694 net monthly remainder after his expenses.³

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 list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

¹ Item 4.

² Items 1, 3, 5-8.

³ Item 3, 5-6.

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 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 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 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.

Under 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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 debts are recent and remain unresolved. He did not provide sufficient evidence to show that the debts are unlikely to recur. AG ¶ 20(a) does not apply. Applicant provided evidence that he experienced two periods of unemployment, one due to a layoff and the other due to his misconduct that resulted in his firing, which contributed to his financial problems. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. He presented no such evidence of responsible behavior. I find AG ¶ 20(b) does not apply. Applicant presented no evidence of financial counseling and there is no clear evidence that Applicant's financial problems are being resolved or under control because the debts remain unpaid. Although he did satisfy a non-SOR-related

judgment, there is insufficient evidence showing that he made a good-faith effort to pay the SOR debts. I find AG ¶¶ 20(c) and 20(d) do 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 the 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I also considered Applicant's personal situation. However, he has not shown a track record of financial stability.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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.t:	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.

Robert E. Coacher
Administrative Judge