



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



In the matter of:)	
)	
)	ISCR Case No. 12-05163
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

August 18, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant incurred substantial delinquent indebtedness and failed to resolve the majority of his delinquent accounts. While he provided documentation that he resolved two small debts, he remains indebted to 12 creditors in the approximate amount of \$28,774. The evidence failed to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on October 19, 2011. On May 29, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on August 2, 2014, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on May 1, 2015, and a Notice of Hearing was issued by that Judge scheduling the hearing for June 3, 2015. On May 29, 2015 that hearing was cancelled and the file was transferred to me on June 1, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a new Notice of Hearing on June 2, 2015, and I convened the hearing, as scheduled, on June 23, 2015. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified on his own behalf and presented Appellant's Exhibits (AE) A and B. The record was left open until close of business July 28, 2015. Applicant presented a five-page submission, marked AE C, on July 28, 2015. Department Counsel had no objections to AE C and it was admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on July 2, 2015.

Procedural Ruling

At the hearing on June 23, 2015, Department Counsel made a motion to amend the SOR, in order to conform to the evidence, by adding ¶1.n pursuant to Directive ¶ E3.1.17. Applicant had no objections to the amendment. The motion to amend was granted. (Tr. 43-44.) The allegation is as follows:

1.n You were indebted to [Creditor] on a private student loan in the approximate amount of \$10,102.

Findings of Fact

Applicant is 31-years-old. He graduated in 2009 with a bachelor's degree. He was hired by a government contractor in June 2009 and has been fully employed since then. He seeks a security clearance in connection with his employment. He is single and identified no children. (GE 1; Tr. 28-29.)

The Government alleged that Applicant is ineligible for a clearance because he has made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR alleged that Applicant is delinquent on 14 debts in the total amount of \$29,074. His debts consist of delinquent student loans totaling \$27,253, and unpaid medical debt of \$1,821. In his AR, Applicant admitted all of the allegations concerning delinquent debts set forth in SOR ¶¶ 1.a through 1.h, and 1.k through 1.m. He admitted SOR ¶ 1.n at hearing. (Tr. 48.) He denied SOR ¶¶ 1.i and 1.j in his AR. Applicant's admissions are incorporated in the following findings.

Applicant claims he became delinquent on his student loan debt because the repayment notices were mailed to his grandmother's home and were not forwarded to him. In July 2014 he applied to consolidate some of his student loan debt, totaling \$21,139.83. He testified that SOR ¶¶ 1.a through 1.h were included in his consolidation, but offered no documentation to support this claim. He claimed to have made payments

of \$109 on the consolidated loan, although he admitted missing two payments. His June 2015 credit report reflect SOR ¶¶ 1.a through 1.h are past due, although he was current on his consolidated loan payments. (GE 6.) Because Applicant failed to show that the debts alleged in SOR ¶¶ 1.a through 1.h are included in the consolidated loan, they are unresolved. Further, the student loan debt alleged in SOR ¶ 1.n remains unresolved. (GE 6; Tr. 33-36, 38-40, 42, 47.)

Applicant testified he resolved all of his medical debts. (Tr. 27.) He documented he resolved the two medical debts identified in SOR ¶¶ 1.i and 1.j. He presented a receipt from this creditor showing that he paid these two debts in full. His June 2015 credit report also reflects these debts as paid. They are resolved. (GE 6; AE A.) However, Applicant failed to present documentation to show that he has addressed the medical debts identified in SOR ¶¶ 1.k through 1.m. (GE 3.) They are unresolved.

Applicant testified that he has an undisclosed amount of money left over at the end of the month after paying his bills. He estimated that he has between \$2,000 and \$3,000 in savings. (Tr. 46-47.)

Applicant provided character references describing his good judgment, trustworthiness, integrity, and reliability from his senior pastor, his supervisor, and a coworker. They note Applicant has exceptional talent both in his job, musically, and in sports. (AE C.)

There is no evidence that Applicant obtained credit counseling, sought assistance with a debt consolidation company, or formally contested any of his debts. He did not provide a budget or a solid plan to address the delinquent debts. He submitted no evidence concerning the quality of his professional performance, or the level of responsibility his duties entail.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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 under 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.

The record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant incurred significant student loan debt that he ignored after graduation, despite full employment. He also failed to address medical delinquencies, despite having a positive monthly net remainder. His history of indebtedness and remaining debts from 2009 to present raise security concerns under DCs 19(a) and (c), 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 SOR-listed delinquent debts are recent and ongoing, without indication that the circumstances under which they arose have changed. His history of financial irresponsibility goes back several years, with no demonstrated period of meeting his voluntarily undertaken debt obligations despite regular employment. He therefore failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). He voluntarily incurred all of the debt in question, and has been fully employed during the period the payments became delinquent. This is not responsible action under the circumstances.

Applicant did not provide any evidence of financial or credit counseling. Partial mitigation applies to the two debts that have been resolved. However, he neither documented any effort to repay or otherwise resolve the remaining SOR-listed

delinquent debts, nor asserted a legitimate basis to dispute their validity. These facts preclude mitigation under MC 20(c), (d), or (e).

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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant incurred substantial delinquent indebtedness that he has made little effort to repay. These debts remain outstanding, creating the ongoing potential for pressure and duress. He provided no evidence to show that continuation or recurrence is unlikely, or that behavioral changes demonstrate rehabilitation. He is a mature and experienced individual who is accountable for his choices and financial irresponsibility. Overall, the record evidence creates ongoing doubt as to Applicant's present eligibility and suitability for a security clearance.

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.h:	Against Applicant
Subparagraphs 1.i and 1.j:	For Applicant
Subparagraphs 1.k through 1.n:	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.

JENNIFER I. GOLDSTEIN
Administrative Judge