



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-05626
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

May 25, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant remains indebted to 18 creditors in the total approximate amount of \$47,041. Those delinquencies were incurred after he discharged additional debt through a Chapter 7 bankruptcy in February 2002. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on January 9, 2012. (Item 5.): On May 5, 2015, 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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR, dated August 25, 2015 (Item 4), and requested that his case be decided by an administrative judge on the written record without a hearing. Department Counsel submitted the Government's written case on October 27, 2015, containing 12 Items. A complete copy of the File of Relevant Material (FORM) was received by Applicant on November 9, 2015, 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 November 9, 2015. He failed to submit additional material in response to the FORM by the due date of December 9, 2015. I received the case assignment on March 2, 2016.

Findings of Fact

Applicant is 49 years old, and has worked for a defense contractor since 2002. He is a high school graduate and earned a certificate from a police reserve academy in 1991. He reported he is married to his third wife. He has four children and five stepchildren.

The Government alleged that Applicant is ineligible for a clearance because he 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 18 debts in the total approximate amount of \$47,041. In Item 4, Applicant admitted the delinquent debts as set forth in SOR ¶¶ 1.b through 1.g, 1.i, 1.j, 1.l, 1.m, 1.o, 1.q, 1.r. He denied the delinquent debts as set forth in SOR ¶¶ 1.a, 1.h, 1.k, 1.n, 1.p, 1.s. Applicant's delinquent accounts appeared on his credit reports dated April 16, 2015; December 13, 2013; and January 18, 2012. (GE 7; GE 9; GE 10.)

In November 2001 Applicant filed for Chapter 7 bankruptcy due to financial difficulties caused by Applicant's unemployment for four months in 2000. He "lived off of [his] credit cards until [he] returned to work in November 2000." (Item 12.) His financial problems were compounded when he again became unemployed in July 2001. He did not have the income to repay his debts and support his family. As a result, he sought Chapter 7 protection. His debts of an undisclosed amount were discharged in February 2002. (Item 11.)

Despite Applicant's discharge of debt in 2002, by 2008 a number of Applicant's financial account had become delinquent, including the debt alleged in SOR ¶ 1.l. (Item 10.) Applicant explained that in April 2008, he was in a vehicular accident that caused him to be off work until February 2009. Applicant used his credit cards to support his family during that time. (Item 6.)

Applicant's delinquent debt consists of a judgment in the amount of \$678 (SOR ¶ 1.a); eight medical debts totaling \$2,317 (SOR ¶¶ 1.b through 1.g, 1.i, and 1.j); a debt to a music store for the rental of an instrument in the amount of \$946 (SOR ¶ 1.h); and eight other consumer credit collection accounts totaling \$43,100. (SOR ¶¶ 1.k through 1.r).

Applicant failed to provide documentation to show he has taken any action on his delinquent accounts. While he claimed to have repaid two of the debts (SOR ¶¶ 1.d and 1.g), he provided nothing to substantiate his claim. He also claimed that the creditor forgave the debt alleged in SOR ¶ 1.l, but failed to produce documentation to show that debt is resolved. He asserted SOR ¶ 1.k was included in his bankruptcy but did not support that claim with documentary evidence. Further, he indicated that he did not recognize the accounts identified in SOR ¶¶ 1.a, 1.n, 1.p, and 1.s, but did not provide documentation to show he had contested those debts or taken other action to resolve them. All of the alleged delinquent accounts remain unresolved. (Item 4.)

The record lacks evidence concerning the quality of Applicant's professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. No character witnesses provided statements describing his judgment, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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.

Department Counsel asserted, and the record evidence established, 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 has a long history of delinquent debt. In 2002 he discharged an undisclosed sum of delinquent debts in Chapter 7 bankruptcy. Despite that discharge, from 2008 to present, he accumulated 18 additional delinquent debts in the total approximate amount of \$47,041. His ongoing pattern of delinquent debt, and history of inability or unwillingness to pay his lawful debts, raises security concerns under DCs

19(a) and (c), and shifts 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 failed to produce sufficient evidence that he has addressed any of his delinquencies. He offered little evidence from which to establish a track record of debt resolution. He demonstrated that conditions beyond his control such as unemployment and a vehicle accident contributed to his financial problems but failed to show that he acted responsibly under such circumstances after those events. He did not produce evidence that he received financial counseling. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning an alleged debt, and Applicant failed to provide such evidence. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions.

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 is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His SOR-listed delinquent debts arose over the past eight years and appear to remain unresolved. He did not show he resolved even the smallest of his debts, totaling only \$10. He offered insufficient evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of his life to offset resulting security concerns. The potential for pressure, coercion, and duress from his financial situation remains undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his 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.s	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