



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



In the matter of:)	
)	
)	ISCR Case No. 12-07405
)	
)	
Applicant for Security Clearance)	

Appearances

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

06/07/2016

Decision

WHITE, David M., Administrative Judge:

Applicant lost a home to foreclosure in 2008, and continues to owe more than \$34,000 in delinquent debt without any effort to repay it, despite employment in his present position for more than five years. The evidence is insufficient 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 December 15, 2011. On June 27, 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 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 1, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 3, 2015. The case was assigned to me on September 10, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 16, 2015, and I convened the hearing, as scheduled, on December 8, 2015. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf. I granted Applicant's request to leave the record open until January 8, 2016, for submission of documentary evidence. DOHA received the transcript of the hearing (Tr.) on December 16, 2015. Applicant did not submit any documentary evidence during the time allotted, nor did he request additional time to do so, and the record closed as scheduled.

Findings of Fact

Applicant is a 49-year-old customer service representative and material handler, who has worked for a defense contractor since August 2010. Before obtaining this position he was unemployed for 29 months, after being laid off in March 2008 by the company that had employed him as a warehouse associate since April 1990. He is married with five children, three of whom are adults. He is a high school graduate. He has never held a security clearance and has no military service. (GE 1; Tr. 6-8, 35-40.)

In his response to the SOR, Applicant admitted all of the allegations concerning his financial history. (AR.) Applicant's admissions are incorporated in the following findings.

Applicant, his brothers, and his parents bought a home together in 1997 in another state. They all intended to contribute to the mortgage payments to maintain it as a family home. Several years later, Applicant's parents moved away, and one of his brothers lost his job. Applicant could not afford to continue making the mortgage payments, and the home was sold by the mortgage lender pursuant to foreclosure proceedings in 2008. (AR; GE 2; Tr. 26-27, 43-47.)

Applicant admitted incurring and owing the 13 delinquent debts, totaling \$34,486 as alleged in SOR ¶¶ 1.a through 1.m. These debts range from \$39 to \$12,786. He negotiated a repayment plan for the \$1,235 state tax debt alleged in SOR ¶ 1.e, but failed to mail the document accepting the plan to the state, or make any payments thereunder. He acknowledged making no effort or payments toward resolution of the other debts alleged in the SOR. (AR; Tr. 26-31, 47-52.)

Applicant took a financial management class and has attempted to use what he learned to improve his financial responsibility. However, he has insufficient resources to make payments toward any of the SOR-alleged delinquent debts, and has incurred more delinquent debt, including unpaid Federal income taxes. (AR; GE 3; GE 4; Tr. 52-68.)

Despite being invited and given extra time after his hearing to do so, Applicant submitted no evidence of debt resolution, character references, or other evidence concerning the nature or quality of his job performance. (Tr. 70-71, 76.)

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 purchased a home with other family members in 1997, but was unable to make mortgage payments when other family members stopped contributing and the home loan went into foreclosure in 2008. Applicant subsequently incurred more than \$34,000 in debts to numerous creditors that he could not repay. These debts and his history of financial irresponsibility 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 significant and ongoing, without indication that the circumstances under which they arose have changed. His long history of financial irresponsibility continues, despite regular employment in his current position for more than five years. He therefore failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). Some debts were associated with unexpected family situations, but Applicant did not demonstrate attempts to resolve those debts or other responsible action under the circumstances.

Applicant said that he took a financial management class, but has not yet shown substantial progress toward debt resolution or changes to bring his financial situation under control. He failed to resolve even a \$39 medical collection account (SOR ¶ 1.k), and has incurred additional delinquencies since the issuance of the SOR. He did not establish significant mitigation under MC 20(c) or (d). MC 20(e) is not implicated since Applicant admitted all allegations in the SOR.

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.

