



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



In the matter of:)	
)	
)	ISCR Case: 12-07472
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

01/12/2016

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated over \$25,000 of delinquent debts between 2007 and 2012. He documented the recent resolution of about \$4,900 of that debt. He failed to provide evidence that he paid, resolved, or is resolving any of the remaining debts. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

In February 2012, Applicant submitted a security clearance application (SF-86) for an investigation. On May 16, 2015, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR), 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; DoD 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* (AG), effective within the DoD after September 1, 2006.

On June 11, 2015, Applicant answered the SOR (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On October 15, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant on August 25, 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 and returned the receipt to the Defense Office of Hearings and Appeals (DOHA). He provided additional information in response to the FORM within the 30-day period. Department Counsel had no objection to said submission, which I marked as Applicant Exhibits (AE) A through E, and admitted into the record, along with the Government's eight Items. DOHA assigned the case to me on October 15, 2015.

Findings of Fact

In his Answer to the SOR, Applicant denied responsibility for the allegations in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, and 1.j. He admitted the allegation in SOR ¶ 1.i. (Item 1.) His admission is incorporated into these findings.

Applicant is 44 years old. He is married and does not have children. He graduated from high school and a vocational school. He began working for a defense contractor in October 2011. (Item 4.)

In February 2012 Applicant submitted an SF-86. In response to questions about his financial situation, he disclosed that he had delinquent debts, including some which were subsequently alleged in the SOR. (Item 4.)

Based on credit bureau reports (CBR) from April 2012, August 2014, and November 2014, the SOR alleged ten delinquent debts that totaled \$25,403 and accumulated between 2007 and 2012. (Items 5-7.) They included debts owed to a credit card company, medical providers, a landlord, a utility company, and a cell phone company. Applicant submitted proof that he paid the \$4,797 debt in SOR ¶ 1.b, owed to a previous landlord, and the \$130 debt in SOR ¶ 1.i, owed to a medical provider. In his Answer he stated that he was disputing a debt and had paid all of the smaller debts. (Item 2.) He did not submit proof of a dispute or evidence that he has resolved or is resolving any of the other eight debts.

Applicant stated in his response to the FORM that "There were many trying circumstances that contributed to getting into this situation that were beyond my control." (AE A.) He did not elaborate on those conditions. He said he had made progress in handling his financial issues, but did not explain how. (AE A.)

There is no evidence that Applicant obtained credit counseling or sought professional assistance with resolving his debts within the past couple years. He did not provide a budget or a solid plan to address the delinquent debts.

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 (AG) list potentially disqualifying conditions and mitigating conditions, 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 relating to 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant accumulated unpaid delinquent debts between 2007 and 2012. He has been unable or unwilling to satisfy or resolve them until recently. The evidence raises both security concerns, 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.

Eight of the ten delinquent debts alleged in the SOR, which arose between 2007 and 2012, remain unresolved. Because Applicant failed to sufficiently document the resolution or steps taken to resolve those debts, he did not demonstrate that such problems are unlikely to continue or recur. His reliability and trustworthiness in managing delinquent debts remain a concern. The evidence does not support the application of AG ¶ 20(a). Applicant stated that circumstances beyond his control contributed to his financial problems, but he did not specify what those were or how he acted responsibly under the circumstances. Hence, AG ¶ 20(b) does not apply.

Applicant has not participated in financial or credit counseling. There are not clear indications that he has a plan to resolve the delinquent debts. He has not shown that his finances are under control. Thus, AG ¶ 20(c) has no application. He provided documentation to prove that the debts in SOR ¶¶ 1.b and 1.i are paid, demonstrating that he made a good-faith effort to resolve those debts. Hence, AG ¶ 20(d) applies to them, but not the other eight debts. Applicant did not submit evidence that there is a reasonable basis to dispute any delinquent debt. AG ¶ 20(e) is not applicable.

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.

According to 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 41 years old. He has been employed with a defense contractor since October 2011. He truthfully disclosed delinquent debts in his 2012 SF-86, most of which remained unresolved in May 2015 when the SOR was issued. He submitted proof that he resolved two of the alleged debts and said he paid others. However, he submitted no evidence to confirm that assertion nor did he present a budget or plan for addressing the unresolved debts which total about \$20,000. The likelihood that similar problems will continue is undiminished. Overall, the record evidence leaves me with sufficient doubt as to Applicant's judgment, eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising under the guideline for 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c through 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge