



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-08143

Appearances

For Government: Gina L. Marine, Esq., Department Counsel

For Applicant: *Pro se*

06/23/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On July 14, 2014, 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

On August 21, 2014, Applicant answered the SOR, and elected to have his case decided on the written record in lieu of a hearing. He submitted some documents. Department Counsel did not object to them and they are admitted. On February 4, 2015, Department Counsel prepared the Government's file of relevant material (FORM).

The FORM was mailed to Applicant on February 19, 2015, and it was received on March 26, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not object to any of the documents submitted by the Government, and they are admitted. In response to the FORM, Applicant provided additional information, which was included in the record without objection. The case was assigned to me on June 1, 2015.

Findings of Fact

Applicant admitted SOR allegations ¶¶ 1.b, 1.c, and 1.g. He denied the remaining allegations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 51 years old. He has not served in the military. He is a college graduate. He has been married since 1992. He has two children, ages 21 and 19. He has worked for the same federal contractor since 1986.¹

The SOR alleges 10 delinquent debts totaling approximately \$72,488 and a past due mortgage of \$251,000. Applicant's indicated his financial problems began in 1996 when he and his wife cared for her siblings after the death of her parents. He indicated this continued until approximately 2004 or 2005. He did not provide any specific information as to how old the siblings were, how many siblings, or what specific support they provided. He indicated he was living within his means prior to 1996 and then began using credit cards to keep up with expenses. He fell behind on paying his credit cards and mortgage. He stated that in approximately 2004 or 2005 he used a debt management firm to help manage his finances up until about 2011. He did not provide any additional information regarding what action the firm took on his behalf.² He also attributed his problems to his "bad handling of finances" and his wife's use of credit cards without his knowledge.³

Applicant provided documented proof that he resolved the debts in SOR ¶¶ 1.a, 1.d, 1.i, and 1.k.⁴ The remaining delinquent debts alleged are verified by credit reports.⁵

The debt in SOR ¶ 1.b (\$3,795) is a state tax lien. Applicant originally attributed this lien to property tax owed on his residence when he fell behind in paying his mortgage. He indicated in his personal subject interview (PSI) that a plan was worked

¹ Item 4.

² Item 5.

³ Item 4 pages 36 and 38.

⁴ Item 3 pages 3-5, 9, 14, and 16.

⁵ Items 6, 7, and 8.

out with the mortgage lender and he believed the taxes were up to date.⁶ In his answer to the SOR, he indicated the tax lien was for delinquent state income taxes from 2007. He was investigating the lien believing there is an error. He indicated that the balance owed was \$4,091, and he made an initial payment of \$820 and agreed to pay off the balance over twelve months with monthly payments of \$275. He did not provide any documented proof of payments.⁷ In his response to the FORM, he indicated he was continuing to research the legitimacy of the debt and was paying \$250 a week on the debt. He did not provide documents to support his payments.⁸

The debt in SOR ¶ 1.c (\$251,000) is a home mortgage that Applicant stated was foreclosed and sold. He indicated in his answer to the SOR that he became aware in January 2014 that the house was being foreclosed. He was unaware of the situation before then because his wife was handling the finances. He believed their mortgage was being modified. He indicated they were required to vacate the house in May 2014. No other information was provided regarding the status of this debt or if a deficiency remains.⁹

Applicant disputes that the debts in SOR ¶¶ 1.e (\$2,388) and 1.h (\$4,802) belong to him, but failed to provide corroborating documents to support his position.¹⁰ He also disputes the debt in SOR ¶ 1.f (\$44,673). He indicated in his PSI that he could not recall when the account in SOR ¶ 1.f became delinquent, but he had a payment plan to resolve the debt through monthly payments for the next six years.¹¹ In his answer to the SOR, he provided a document showing an account was settled, but the account number is not the same as the alleged debt. Applicant did not provide further documents to prove the settled account is the same as the alleged account.¹²

Applicant indicated in his answer to the SOR that he had a payment plan for the debt in SOR ¶ 1.g (\$773), but did not provide supporting documents to show his payments.¹³ In his response to the FORM, he indicated he was “starting to make payments on this item,” but failed to provide documents to show his payments.

Applicant indicated in his answer to the SOR that the debt in SOR ¶ 1.j (\$7,473) was a credit card account that his wife put his name on without his knowledge. He

⁶ Item 5.

⁷ Item 3 pages 6-7.

⁸ Response to FORM.

⁹ Item 3 page 8, Item 6.

¹⁰ Items 7 and 8.

¹¹ Item 5 at 2.

¹² Item 3 page 11.

¹³ Item 3.

stated that he was only an authorized user and had no liability for the account. Applicant provided a document from the creditor indicating authorized users had no contractual financial obligation on the account.¹⁴ In his PSI he indicated that this credit card was being used to pay household expenses, and he was making monthly payments of \$325 to resolve the debt in six years.¹⁵

Applicant provided a credit report dated August 5, 2014, which lists a new delinquent debt for \$361.¹⁶

Applicant indicated in his answer to the FORM that he intended to pay all of his creditors; has never been arrested; and works hard at his job.

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 and mitigating conditions, which are 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 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. 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

¹⁴ Item 3 at 15.

¹⁵ Item 5.

¹⁶ This debt is not alleged in the SOR and will not be considered for disqualifying purposes, but will be considered when analyzing Applicant's credibility and the "whole-person."

mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 as to 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

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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 the following under AG ¶ 19:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant has 10 delinquent debts alleged in the SOR, totaling approximately \$72,488 and a delinquent mortgage account of \$251,000, which are several years old and some are not resolved. I find the above disqualifying conditions have been raised.

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

- (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 provided supporting documents to show he has resolved the debts in SOR ¶¶ 1.a, 1.d, 1.i, and 1.k, and he is not liable for the debt in SOR ¶ 1.j. AG ¶ 20(d) applies to these debts and the allegations are resolved in his favor.

Applicant indicated his financial problems began in 1996 when he and his wife cared for her siblings. Their assistance continued until approximately 2004 or 2005. He also indicated his poor financial management and his wife's mismanagement of their finances, as well as her failure to tell him about their problems, contributed to the delinquent debts. Applicant continues to have delinquent debts that have not been resolved. It has been more than ten years since providing assistance to his wife's siblings ceased. AG ¶ 20(a) does not apply because Applicant's debts are recent, and there is insufficient evidence to conclude that his recent financial problems were the result of unique circumstances that are unlikely to recur.

Assuming responsibility to care for Applicant's wife's siblings may have been a condition beyond his control. However, his poor financial management was within his control. His wife's mismanagement was somewhat within his control. For the full application of AG ¶ 20(b), there must be evidence that Applicant acted responsibly under the circumstances. He began experiencing financial problems in 1996. After approximately 2004 or 2005, he no longer had the additional financial responsibility of

caring for his wife's siblings. It appears he sought financial assistance in 2004 through a debt management firm, but discontinued using it in 2011. No specific evidence was provided as to what the firm did for him in resolving his debts or why he stopped using it. There is insufficient evidence that Applicant acted responsibly in resolving his debts. AG ¶ 20(b) minimally applies.

There is insufficient evidence to conclude Applicant has received recent financial counseling, or that his finances are under control. He indicated he is paying certain debts through monthly payments, but there is no documented proof to support his position. AG ¶ 20(c) does not apply.

Applicant disputes some debts, but did not provide the basis of the legitimacy of the past-due debts or provide documented proof to substantiate the basis of the dispute or evidence of actions he has taken to resolve the issue. AG ¶ 20(e) does 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 guidelines 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 51 years old. He has had financial difficulties dating back to 1996. He resolved some delinquent debts, but others remain outstanding. He failed to provide information about the status of any deficiency on his foreclosed mortgage. He did not provide documentation to support payments he indicated he made on debts. He did not submit a budget or plan to resolve the debts. Applicant has not established a consistent financial track record to show he is resolving his financial problems. Although there is

some evidence of mitigation, it is insufficient to meet his burden of persuasion. 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.h	Against Applicant
Subparagraphs 1.i-1.k:	For 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge