



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



In the matter of:)
)
) ISCR Case No. 12-08364
)
Applicant for Security Clearance)

Appearances

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

10/30/2015

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 April 30, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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 effective within the DOD for SORs issued after September 1, 2006.

On May 28, 2015, and June 1, 2015, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. On July 14, 2015, Department Counsel submitted the Government’s file of relevant material

(FORM). The FORM was mailed to Applicant, and it was received on August 4, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to Government documents offered as evidence. Items 5 through 11 were admitted into evidence. Applicant submitted additional information, which was marked Item 12 and admitted into evidence without objection. The case was assigned to me on October 5, 2015.

Findings of Fact

Applicant denied all the SOR allegations, except ¶ 1.h. I have incorporated his comments 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 45 years old. He earned an associate's degree in 1999. He served in the military from 1988 to 2011 and honorably retired in the paygrade E-6. He has been employed by a federal contractor since April 2011. Applicant married in 1990 and divorced in 1991. He remarried in 1993 and has three children, ages 21, 19, and 17. Applicant held a security clearance while on active duty.

In 2002, Applicant was interviewed as part of a background investigation, and he made a sworn statement. Regarding the delinquent debts that he was confronted with during his interview he stated: he was unaware he had delinquent debts and had never heard of some of the creditors; he had done business with certain creditors, but did not know he owed them money; he was aware of certain accounts, but disputed the amounts he owed to those creditors; he promised to pay some creditors once the disputes with them were settled; he believed other accounts listed as delinquent had been paid in full; he believed accounts owed to medical providers were in error because his family and his medical care was provided through the military and all he owed were copayments that he had paid; and he paid certain creditors, but they never received his payments. He indicated he was deployed for different months in 1999, 2000, 2001 and 2002. He believed his wife received bills and correspondence that he never heard about. He concluded by stating: "I either forgot about the account, did not know about the account at all, the account was in dispute, and I do not believe I owe anything on the account."¹

In January 2004, Applicant was notified that the military intended to revoke his security clearance due in part to his finances. In response to the letter regarding his financial problems, Applicant stated that he and his wife contacted credit advisors and were "paying some of the debts that were discussed." He also stated that he was repaying all of his debts and even some that he felt he could dispute. He stated his financial problems were "due to situations that arose during my deployment, there were personal issues between my wife and I that were kept from me. Once these issues were

¹ Item 10.

researched, they were rectified and/or paid in full.”² Applicant had two judgments at the time.³ He further stated:

I would like to say that at the time of my interview with [investigator], my knowledge of the circumstances was somewhat limited. Due to my time deployed and personal issues with my wife, I was not trying to hide or evade any information from the U.S. Government. To date, I have resolved all the pertinent issues in question as indicated in my response.⁴

In April 2004, the military, made a favorable determination regarding Applicant’s security clearance. In its letter it stated the following: “Although a favorable determination has been made, you are cautioned that receipt of derogatory information, especially of a nature similar to that mentioned in [the January 2004 letter of intent], will be cause for immediate reconsideration.”⁵

On March 23, 2012, Applicant completed a security clearance application (SCA). In it he disclosed two judgments. He indicated that one of the creditors had made an error and another was for dental care that should have been paid by TRICARE. He stated both judgments were paid.⁶ Applicant also disclosed eight other delinquent debts. They are SOR ¶ 1.o (\$482) from 2006 that he disputed. SOR ¶ 1.l (\$702) for medical services from 2007 that he indicated was paid. SOR ¶ 1.m (\$846) for medical services from 2008 that he indicated was paid. SOR ¶ 1.n (\$540) from 2010 that he was researching because he did not recognize the debt. SOR ¶ 1.b (\$9,984) is for a repossessed vehicle from 2011. He stated the creditor reported he missed two payments. Applicant indicated the payments were made late and the creditor repossessed the vehicle. He was now disputing the debt. SOR ¶ 1.h (\$214) is from 2012 for cable services. Applicant indicated that he never had services with this company. Applicant also disclosed that in 2009 his home was foreclosed. The mortgage debt was satisfied through the sale of the home.⁷

Applicant was interviewed by a government investigator in April 2012. He indicated that he had spoken with a financial counselor to learn about a payment program and other options. Applicant created a budget, but did not enter into a payment

² Item 11.

³ Item 11.

⁴ Item 11.

⁵ Item 11.

⁶ These judgments were different than the ones that were addressed in Applicant’s first security review.

⁷ Item 5.

program and had only discussed potential options. He also spoke with a law firm about filing bankruptcy, but had not pursued it.⁸

Applicant discussed with the government investigator the accounts that he disclosed on his SCA and the investigator brought to his attention other delinquent accounts that were on his credit report. Applicant's responses regarding the numerous delinquent accounts were that he never knew he had an account with a particular creditor, so did not know he owed any money; he requested information from a creditor about a debt and had not received a response; he was aware of a creditor, but did not know he owed money to that creditor; he acknowledged the debt, but disputed the amount owed; he had paid the debt and disputed he owed any more money; his medical insurance should have paid the debt; he does not have an account with a creditor alleged; he made payments to the creditor and it claimed it never received the payments; and the debt does not belong to him and he is disputing it.⁹

Applicant attributed some of his financial problems to his wife losing her job in 2008 due to being accused of embezzling \$11,000 from her employer. In April 2011 his wife pled guilty to a misdemeanor for embezzlement and was ordered to pay \$11,000 in restitution.¹⁰ During his interview, he also acknowledged that he was living paycheck to paycheck, but was able to meet his current financial obligations. He was paying his monthly expenses he would pay other bills when he was able. He noted that although the loss of his wife's job had an impact on their finances, they have always struggled with their finances.¹¹

In his 2015 answer to the SOR, Applicant stated that he was unaware of some of the issues on his credit report "due to not receiving correspondence from said creditors." He further stated:

I would like to state that at the time of my interview my knowledge of the circumstances was somewhat limited. I am not trying to hide or evade any information from the U.S. Government. Some of these debts after researching them are nine years old for which I was still active duty military and deployed at the time which limited my knowledge. I am a single income family with a disabled child and a wife with health issues. Some of these old debts are not mine and will/are being disputed to have them removed from my credit report.¹²

⁸ Item 8.

⁹ Item 8.

¹⁰ Item 8.

¹¹ Item 8.

¹² Item 4.

In his answer to the SOR, Applicant admitted he owed the debt in SOR ¶ 1.h (\$214), which during his background interview he had denied he owed and stated he had never had cable services with the company. In his response to the FORM, he indicated that in June 2015, he paid \$358, the balance of this debt. He did not provide documentary proof.¹³ He indicated that he also had paid the debt in SOR ¶ 1.b (\$9,984) in full in November 2014. He did not provide documentary proof.

In Applicant's response to the FORM, he stated he is still researching the debt for a repossessed vehicle in SOR ¶ 1.a (\$10,181). He stated that his insurance company had paid the debt in SOR ¶ 1.d (\$2,753). He failed to provide documentary proof. He stated that in June 2015 he paid the current balance owed of \$1,186 for the debt in SOR ¶ 1.g (\$987). He did not provide documentary proof. He stated that in June 2015 he resolved the debt in SOR ¶ 1.k (\$446) that had a current balance of \$694. He failed to provide documentary proof.¹⁴

Regarding the medical debts alleged in SOR ¶¶ 1.l (\$702) and 1.m (\$846), Applicant stated that his insurance company paid the amounts and there are no outstanding balances. Regarding the remaining medical debts in SOR ¶¶ 1.i (\$107) and 1.j (\$53), Applicant indicated he was still working with his insurance company to resolve the debts.¹⁵

In June and July 2015, Applicant sent dispute letters to the creditors for the debts in SOR ¶¶ 1.c (\$2,623), 1.e (\$1,233), 1.o (\$482), 1.n (\$540), and 1.f (\$998).¹⁶ Credit reports from December 2014 and March 2012 substantiate the debts alleged in the SOR. A credit report from June 2002 reflects Applicant's history of financial problems.

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

¹³ Item 4.

¹⁴ Item 12.

¹⁵ Item 12.

¹⁶ Item 12.

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 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 15 delinquent debts alleged in the SOR totaling more than \$32,000 that are unpaid and unresolved. I find the above disqualifying conditions have been established.

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; and
- (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 has numerous delinquent debts that are unpaid and unresolved. He experienced financial problems in 2002, and they continue until the present. Despite being aware in 2004 that paying his bills and maintaining his finances were important to keeping his security clearance, he again accumulated delinquent debts. He failed to provide sufficient evidence to show that he has paid his creditors and resolved his debts. I am unable to conclude that his behavior is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to his wife's unemployment and health. His wife has not worked since 2008 when she lost her job after being arrested for embezzlement. This was beyond Applicant's control. Applicant also noted that he has a disabled son, which is a condition beyond his control. For the full application of AG ¶ 20(b), Applicant must show he acted responsibly under the circumstances. He failed to provide any information about his current earnings, retirement pay, budget, or plans for resolving his debts. Applicant failed to provide convincing evidence that he acted responsibly regarding his debts. AG ¶ 20(b) partially applies.

Applicant indicated in his 2012 background investigation statement that he had received some financial counseling. Applicant stated in his answer to the SOR and the FORM that he had paid or resolved certain debts alleged in the SOR and was disputing other SOR debts. He failed to provide documentary proof of his payments. He failed to provide a reasonable basis to dispute the legitimacy of most of the past-due debts he is disputing. He did provide copies of dispute letters to some creditors that were sent in June and July 2015. Applicant has been on notice since at least 2012, when he completed his SCA and was later interviewed by a government investigator, that his finances were a security concern. AG ¶ 20(c) partially applies because he had some financial counseling, but there are not clear indications that Applicant's financial problems are under control. Although he stated he paid certain debts, he failed to provide proof of any of the payments. AG ¶ 20(d) does not apply. I find AG ¶ 20(e) marginally applies based on the dispute letters. However, based on Applicant's past financial history and statements, it appears some of his disputes are questionable.

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

