



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



In the matter of:

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ISCR Case No. 12-08702

Applicant for Security Clearance

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

July 1, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant incurred substantial delinquent indebtedness but demonstrated neither means nor efforts to resolve it. 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 April 19, 2012. On January 9, 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 February 11, 2015, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on April 2, 2015, and then transferred to me on May 22, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 7, 2015, and I convened the hearing, as scheduled, on May 22, 2015. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 1, 2015.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor, where he has worked since May 2008. He served in the Navy from 2003 to 2008 and was honorably discharged. He received a Good Conduct Medal during his Navy service. In 2008, he was unable to reenlist in the Navy due to medical problems. He received a Veterans Affairs disability rating of 70%. He is married and has two minor children. (GE 1; Tr. 20-24.)

The Government alleged that Applicant is ineligible for a clearance because he has 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 twelve debts in the total amount of \$212,682, and had a \$693.98 garnishment of wages in 2013. In his AR, Applicant admitted all of the allegations concerning delinquent debts set forth in SOR ¶¶ 1.a through 1.m. He testified that his financial problems began when he left active duty. Applicant's admissions are incorporated in the following findings.

Applicant was indebted on his primary mortgage for \$186,669, as alleged in SOR ¶ 1.a. He purchased the home in July 2008 for \$190,000. He testified he paid \$20,000 toward the purchase price. He financed the rest of the home purchase with a conventional loan. He missed a few mortgage payments in 2012 and tried to refinance the loan, but was given a payment plan he could not afford. He attempted to make the increased payments but was unable to after a couple of months. The home was foreclosed on by the lender in April 2015. His most recent credit report reflects that the balance on this debt is now zero. This debt is resolved, although not through any responsible action by Applicant. (GE 2; GE 3; GE 4; Tr. 21, 26-27.)

Applicant is indebted to a credit union for three personal loans in the amounts of \$14,631; \$7,837; and \$925, as alleged in SOR ¶¶ 1.b, 1.c, and 1. e, respectively. Applicant borrowed from this creditor when he started to fall behind on his home loan. He has not documented steps to address these delinquent loans. They are unresolved. (GE 3; GE 4; Tr. 30-32.)

Applicant is indebted on a credit card account that has been placed for collections in the amount of \$1,053, as alleged in SOR ¶ 1.d. He has not taken steps to address this account. It is unresolved. (GE 2; GE 3; Tr. 33.)

Applicant is indebted on seven medical accounts (alleged in SOR ¶¶ 1.f through 1.l), in the total amount of \$1,567. Applicant testified that he resolved some of these debts, but he failed to present documentation to support his claim. These debts are unresolved. (GE 2; GE 3; GE 4; Tr. 36-38.)

Applicant's wages were garnished in 2013 to repay a \$693.98 "state medical" debt. (SOR ¶ 1.m.) Applicant testified that this debt was resolved through garnishment. This debt does not appear on Applicant's most recent credit report. It is resolved, though not due to responsible action on the part of the Applicant. (Tr. 34-35.)

There is no evidence that Applicant obtained credit counseling, sought assistance with a debt consolidation company, or contested any of his debts. He did not provide a budget or a solid plan to address the delinquent debts. He submitted no evidence concerning the quality of his professional performance, or the level of responsibility his duties entail. He provided no character references describing his judgment, trustworthiness, integrity, or reliability.

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 repaid one SOR-listed debt through an involuntary garnishment. Additionally, he accrued more than \$212,682 in other delinquent debts over the past three years, and demonstrated neither the means nor any effort to resolve them. While his home mortgage has been resolved through a foreclosure, eleven debts remain outstanding. His history of indebtedness and remaining debts from 2012 to present

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 recent and ongoing, without indication that the circumstances under which they arose have changed. His history of financial irresponsibility goes back several years, with no demonstrated period of meeting his voluntarily undertaken debt obligations despite regular employment. He therefore failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). He voluntarily incurred all of the debt in question, and has been fully employed during the period the payments became delinquent. This is not responsible action under the circumstances.

Applicant did not provide any evidence of financial or credit counseling. Two debts have been resolved through involuntary garnishment and foreclosure, and do not demonstrate good faith on the part of Applicant. He neither documented any effort to repay or otherwise resolve the remaining SOR-listed delinquent debts, nor asserted a legitimate basis to dispute their validity. These facts preclude mitigation under MC 20(c), (d), or (e).

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 incurred substantial delinquent indebtedness that he has made no effort to repay. These debts remain outstanding, creating the ongoing potential for pressure and duress. If anything, the evidence indicated that his financial situation continues to deteriorate. It does not support a finding that continuation or recurrence are unlikely, or that behavioral changes demonstrate rehabilitation. He is a mature and experienced individual who is accountable for his choices and financial irresponsibility. Overall, the record evidence creates ongoing doubt as to Applicant's present eligibility and suitability for a security clearance.

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.m:	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