



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



In the matter of:)	
)	
)	ISCR Case No. 12-09335
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

06/10/2013

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated January 3, 2013. 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 (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on April 2, 2013. A notice of hearing was issued on April 17, 2013, scheduling the hearing for May 10, 2013. Government Exhibits (GX) 1-3 were admitted into evidence, without objection. Applicant testified and submitted Applicant Exhibits (AX) A-O, which were admitted without objection. I held the record open until June 3, 2013, for additional submissions. Applicant timely submitted a packet of materials, which was marked as AX P. The transcript (Tr.) was received on May 21, 2013. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the January 3, 2013, SOR, Applicant denied four debts and admitted the remaining factual allegations under Guideline F (Financial Considerations) with explanations.

Applicant is a 27-year-old employee of a defense contractor. He graduated from high school in 2005 and attended college for two years. He continues his education at night in computer science. Applicant is not married. (GX 1) He has been with his current employer since October 2012. (Tr. 39) He estimates that he had a security clearance in 2008. (Tr. 64)

The SOR alleges 12 debts totaling approximately \$42,000, which include medical accounts, collection accounts, and two student loans. The credit reports confirm the debts. (GX 2-3)

Applicant explained that the financial concerns alleged are not reflective of his current financial status. He admits that the majority of the debts are old and are the result of his naivete and ignorance as a young person. He held part-time jobs until late 2008. In 2009, he lost his employment and did not have health care insurance, which resulted in delinquent debt. In 2010, he worked in Afghanistan for not quite a year. In April 2011, he started work on a contract that ended in December 2011. (Tr. 46)

In 2010, when Applicant learned about the debts, he researched his credit report. He was skeptical about certain accounts that were in his name. He obtained the services of a credit specialist to dispute some debts and increase his credit score by removing old debts. He promises to pay his legitimate creditors. He also disputes some debts believing that they may belong to his father.

Applicant paid the medical account (\$125) alleged in SOR 1.a on February 26, 2013. (AX A) Applicant settled the \$344 collection account alleged in 1.c for \$246 on March 14, 2013. (AX A) On April 15, 2013, he settled the \$163 collection account alleged in 1.d for \$115. On May 22, 2013, Applicant settled the \$1,716 collection account for \$600. (AX B) On February 26, 2013, Applicant paid the \$192 collection account alleged in 1.f.

Applicant claims that he has reached a settlement for the \$560 medical account alleged in 1.b. for \$266. Applicant expected to make his first payment by May 31, 2013. However, he was not successful. He stated in a post-submission note that his hours were reduced and he did not have the money. (AX C) As to the \$426 medical account alleged in 1.g, Applicant was not successful in locating the account holder. He intends to continue with his efforts to find this creditor. (Tr. 26) On February 25, 2013, Applicant paid the \$74 collection account (1.h) in full. (AX A) In March 2013, Applicant settled the \$479 charged-off account. The \$399 collection account in 1.j is settled and resolved with a zero balance. (AX A)

The charged-off accounts alleged in SOR 1.k and 1.l are not resolved. The total delinquent debt is \$36,000 for student loans. Applicant stated he was not aware of these accounts. He recently contacted the creditor who holds the accounts and he believes he can settle the accounts for ten percent of the amount due. He does not have any documentation to confirm his claim. (Tr. 31)

Applicant plans to save money in order to settle the two student loan debts as soon as possible. When Applicant worked in Afghanistan from 2010 until 2011, his annual salary was about \$140,000. He could not explain how he spent the income and why he did not save more money. He noted that he started a "business" that failed, and he lost \$7,000. Applicant did not know when his financial difficulties began. (Tr. 68)

Applicant noted that since his return from Afghanistan, he has experienced PTSD. He seeks medical care for his symptoms. He is worried about his condition and he will continue to seek help. (Tr. 41) During this time (May 2011 until October 2011), he was not able to support himself. He lived with his girlfriend's father. He did not receive any unemployment compensation. (Tr. 49)

Applicant's current salary is approximately \$45,000. His monthly net income is approximately \$2,600. His net monthly remainder is about \$500. He uses a budget, but he acknowledges that his girlfriend handles the finances. He saves between \$50 to \$100 a month. (Tr.57) He also acknowledged that he has other student loans in deferment in an amount of \$10,000. (Tr. 69) In 2012, Applicant purchased an automobile. He is current with his monthly payments. Applicant stated that his girlfriend is expecting his baby, and he will soon be a father. He realizes that he will incur more expenses. He maintains two credit cards.

Applicant realizes that he has made many mistakes and understands the importance of the financial problems that cause a security concern. He has made efforts recently to correct the situation. He is now focusing on trying to settle the delinquent accounts. He admits that he has about \$100 in savings and is not sure how long it will take to settle the two delinquent student loan debts. (Tr. 71)

Applicant submitted four letters of recommendation from friends and colleagues. He is admired for his passion in the information technology field. Applicant is noted as a "brilliant instructor" who delivers material to his students. He served his country in Afghanistan by maintaining equipment. He has completed security certifications, receiving high scores.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative

judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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." ⁴ "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information. ⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant's character. It is

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. ...

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admits that he has multiple delinquent debts. He acknowledges that he did not handle his finances well as a young man. The debts are old. His credit reports confirm the debts are valid. Consequently, the evidence is sufficient to raise disqualifying condition ¶ 19(a), and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant was candid when he noted that he was irresponsible in some ways as a young man with his finances. The delinquent medical debts occurred when he did not have health insurance. He was unemployed for several months in 2009 and 2011. He paid or settled small debts recently. He has attempted settlements with some creditors but he does not have the funds to make the settlement amounts. He does not have an agreement in place for his student loans. He submitted a post-hearing submission that he could not make the payments on certain accounts by May 31, 2013, as he had hoped, due to lack of funds. He intends to pay but does not know how long it may take him. He spoke to a credit specialist, but has not received financial counseling. I find that the financial considerations concerns are not mitigated.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is a 27-year-old employee of defense contractor who has held a security clearance since 2008. He disclosed his delinquent debt on his security clearance application. He served as a civilian in Afghanistan. He has recently paid or settled small accounts. He was candid that he is not certain how long it will take to save the money to satisfy more debts.

Applicant did not meet his burden of proof. He has not provided sufficient evidence to show that he has addressed the financial issues at hand. Applicant has unresolved student loans. He acknowledged his irresponsibility and cannot receive full credit for circumstances beyond his control. He has started to act more responsibly, but he has not shown a sufficient track record of debt repayment to mitigate all security concerns. Any doubt must be resolved in favor of the government. He has not mitigated the security concerns under the financial considerations guideline.

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:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge