



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



In the matter of:)	
)	
)	ISCR Case No. 12-09511
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2016

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to provide enough documentary evidence to substantiate his contention that his finances are under control. Clearance is denied.

Statement of the Case

On May 2, 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 (AG) implemented by the DOD on September 1, 2006.

On May 19, 2015, Applicant answered the SOR, admitting all of the allegations, and requested a decision on the record rather than a hearing. On August 27, 2015, Department Counsel prepared a File of Relevant Material (FORM) consisting of

documents supporting the Government's allegations. Applicant received the file on September 10, 2015, and was informed that he had until October 10, 2015 to submit a response. Applicant did not submit a response, and the case was subsequently assigned to me on November 5, 2015.

Findings of Fact

Applicant is a 59-year-old married man with two adult children. He has a high school diploma, earned in 1974, and an associate degree, earned in 2001. (Item 2 at 9) Applicant served in the U.S. Navy from 1974 through his retirement in 1994. His service was honorable. (Item 2 at 13) Since 2000, he has worked for a defense contractor as a security guard. (Item 2 at 10) Since approximately 2004, Applicant has also worked part-time as a tutor. (Item 3 at 1)

In 2010, Applicant's state taxing authority entered a tax lien against his property for \$5,697, as alleged in SOR subparagraph 1.g. (Item 1 at 3-4) Applicant first fell behind on his state taxes in 2005 when he realized that he had miscalculated the amount of income to withhold from his pension and his two jobs. (Item 3 at 2) Subsequently, he adjusted his withholdings to prevent future income tax payment shortfalls, and his employer began garnishing his wages, beginning in 2007, as alleged in SOR subparagraphs 1.a through 1.c. (Item 1 at 1, 3) The 2010 lien reflects the remaining amount due as of 2010. Applicant presented no evidence as to the current status of lien payments or whether he has satisfied the lien.

Applicant owes approximately \$9,900 to a health care provider, as listed in SOR subparagraph 1.d. (Item 1 at 3) In Applicant's Answer, he acknowledges this delinquent debt and contends that he contacted the creditor for payoff information. (Item 1 at 3) This debt remains outstanding. Similarly, Applicant contends that he has contacted the creditor listed in SOR subparagraph 1.e and is awaiting payoff information.

The debt listed in SOR subparagraph 1.f is a medical bill totalling \$78. Applicant contends that he has resolved this debt. (Item 1 at 3) He provided no supporting documentary evidence.

Policies

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 together with the factors listed in the adjudicative process. 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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

- (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.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Applicant has approximately \$15,000 of outstanding delinquent debt. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions are potentially applicable.

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant is an industrious man who has consistently been working two jobs for more than ten years. Under these circumstances, I make no negative security inferences with respect to his miscalculation of income withholdings from his Navy pension and his two jobs. Nevertheless, Applicant has the burden of proof to provide concrete evidence that his delinquent debts have either been resolved, or are in the process of being resolved. He failed to do this, therefore, none of the mitigating circumstances apply, and he has failed to mitigate the financial considerations security concerns.

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

Subparagraphs 1.a-1.g: 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.

MARC E. CURRY
Administrative Judge