



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



In the matter of:)
)
) ISCR Case No. 12-09816
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

11/21/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 21, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 by the DOD on September 1, 2006.

Applicant responded to the SOR on July 20, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on August 17, 2015. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on September 28, 2015. As of November 6, 2015, he had not responded. The case was assigned to me on November 10, 2015. The Government exhibits included in the FORM are admitted in evidence.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. He has worked for his current employer since 2004. He is a high school graduate. On his April 2012 Questionnaire for National Security Positions (SF 86), he reported that he was married for the second time and that he had four children and three stepchildren.¹

The SOR alleges three delinquent debts totaling \$25,310. Applicant admitted owing all the debts. Credit reports from May 2012 and October 2014 also substantiate the debts.²

SOR ¶ 1.a alleges a \$23,260 charged-off balance on a loan for a trailer home Applicant purchased for his mother. Applicant bought and financed the trailer, but his mother was supposed to make the payments. She was unable to maintain the payments. Applicant listed the debt on his 2012 SF 86. He wrote that he contacted the creditor “to resolve the issue and they advised [him] not to pay anything.” He reported during his background interview in June 2012 that he contacted the creditor to make payment arrangements, but because the account was so far in arrears, he could not afford to bring the account up to date. In his response to the SOR, he wrote that on “July 15, 2015, [he] agreed to a monthly payment arrangement in the amount of \$100 due on the 10th of each month.”³

Applicant bought a ring for his wife from a jewelry store as an anniversary present. The purchase was financed through the jewelry store. The 2012 credit report listed the charged-off account as opened in 2008, with a date of last action of June 2010. It reported the account as \$1,275 past due with a \$2,734 balance. The 2014 credit report listed the account as charged off, with a date of last action of June 2010. It reported the account as \$1,275 past due with a \$2,013 balance, which is the amount alleged in SOR ¶ 1.b.⁴

Applicant reported during his background interview in June 2012 that he was in the process of making payment arrangements to the jewelry store, and he would pay the account in full as soon as possible. In his response to the SOR, he wrote that the balance on the debt was \$4,859 including interest.⁵ He further wrote:

¹ Items 2, 3.

² Items 1, 3-5.

³ Items 1-5.

⁴ Items 1, 3-5.

⁵ Items 1, 3.

On July 15, 2015, [the jewelry store] accepted my offer to settle this debt in the amount of \$3,000. The payment arrangement has been set up to withdrawal from my checking account on Tuesday July 28, 2015.⁶

SOR ¶ 1.c alleges a \$37 debt to a satellite television company. The debt is listed on the 2012 credit report, but not the 2014 credit report. Applicant contacted the collection company and the satellite television company. He was told the debt was satisfied and closed.⁷

Applicant did not respond to the FORM, so it is unknown if he made the \$100 monthly payments toward the trailer loan or if he paid the \$3,000 settlement amount to the jewelry store. Those two accounts are the only past-due accounts with balances on his 2014 credit report. That credit report listed an auto loan that was opened in October 2013, with a high credit of \$22,263 and a monthly payment of \$414. It listed a second auto loan that was opened in August 2014, with a high credit of \$37,619 and a monthly payment of \$636.⁸

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, 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, administrative judges apply the guidelines 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."

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,

⁶ Item 1.

⁷ Items 1, 3-5.

⁸ Item 5.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard 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 EO 10865 provides that adverse 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 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 under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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; and

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

The \$37 debt alleged in SOR ¶ 1.c is apparently resolved. That allegation is concluded for Applicant. His mother was unable to maintain the payments on the trailer home that he purchased for her. He recently agreed to pay the debt, but he did not submit evidence that he made any payments. Applicant reported during his background interview in June 2012 that he was in the process of making payment arrangements for the jewelry-store debt, and he would pay the account in full as soon as possible. While that debt languished for three years, he financed two auto loans with combined monthly payments of \$1,050. He stated that he agreed to settle the jewelry-store debt for \$3,000, but he did not establish that he made that payment.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. None of the above mitigating conditions are applicable.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in this whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not 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.b:	Against Applicant
Subparagraph 1.c:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge