



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



In the matter of:)	
)	
-----)	ISCR Case No. 12-09893
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

03/28/2016

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On February 5, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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) effective within the DOD on September 1, 2006.

In a response to the SOR, dated March 3, 2015 (SOR Response), Applicant admitted, with comments, five of the 13 allegations raised under Guideline F and the sole allegation raised under Guideline E. He also requested a determination based on the written record in lieu of a hearing. On July 8, 2015, the Government issued a File of Relevant Material (FORM) containing seven attachments ("Items"). Applicant did not respond to the FORM within the 30 days provided. The case was assigned to me on September 22, 2015. Based on my review of the case file and submissions, I find Applicant failed to mitigate financial considerations concerns.

Findings of Fact

Applicant is a 38-year-old network administrator. He served in the United States military from 1998 through 2004, when he was discharged at the rank of staff sergeant. From 2004 through 2010, he was employed by a defense contractor. He was

unemployed from March 2010 through January 2011. At that time, he was hired for his present position. Applicant has held a security clearance most recently since 2007. Divorced in mid-2011 and the father of two minor children, he has since remarried.

On February 7, 2012, Applicant completed a security clearance application (SCA). In response to SCA Section 26, he denied having had debts turned over to a collection agency or been over 120 days delinquent on any debt in the preceding seven years. He did so because he was unaware that many of his accounts were actually in collections, as they had been assigned to his wife during their divorce proceedings.¹ After Applicant completed the SCA, the Government generated a credit report that detailed multiple delinquent debts in Applicant's name. These debts were not noted in Applicant's SCA, but he later volunteered information about them in a subject interview.

Now at issue are delinquencies from the 2012 credit report and from a credit report generated in July 2014. Applicant addressed these accounts in August 2014 interrogatories, but his comments were deemed insufficient. Consequently, an SOR was issued in February 2015. It noted 13 delinquent debts amounting to about \$23,680. Applicant admitted the debts reflected at SOR allegations 1.a (\$3,027), 1.d (\$786), 1.g (\$100), 1.i (\$50), and 1.m (\$180), amounting to around \$4,150. His responses to the allegations were brief and often incomplete.²

In his Interrogatory Response, Applicant provided narrative comments regarding his actions for each enumerated debt and indicated that he had made contact with his creditors. He provided no documentary evidence, however, to that effect. In that same response, he provided a series of letters he wrote that he had sent to his creditors purporting to challenge various credit report entries, a copy of his divorce decree and settlement agreement, a copy of some medical bills, a July 2014 credit report from the three leading credit reporting bureaus, and court documents regarding child support issues. He provided no specific documentary evidence indicating any payments to any of the SOR creditors had been made, unless it is otherwise noted as a satisfied debt on one of the credit reports he provided. All of the debts that the Government alleges in the SOR are listed in FORM, Items 5 and 6, including the debts Applicant denies. Applicant has presented no documentary evidence indicating that any of the debts at issue have been or are being paid or have otherwise been resolved. (FORM at 4).

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

¹ FORM, Item 3, at 2.

² As noted on pages 15-18 of Applicant's Interrogatory Response (FORM, Item 7) Interrogatory Debts a-j are the same as SOR debts 1.a through 1.j. In addition, Interrogatory Debts 1.m, 1.n, and 1.o are the same as SOR debts 1.k, 1.l, 1.m.

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 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.

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 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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). To allay Applicant's concerns, it is stressed that his loyalty is not an issue in this matter.

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has acquired a substantial amount of delinquent debt (approximately \$23,680) of which Applicant admits responsibility for about \$4,150. His assertions regarding his actions on behalf of the remaining allegedly delinquent accounts often lack a nexus with the evidence offered. These facts are sufficient to suggest or invoke two financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 debts are large, ongoing, and unresolved. There are insufficient facts to conclude that the delinquent debts at issue were the result of circumstances beyond Applicant's control and that, given the circumstances, he acted responsibly at the time. There is no documentary evidence showing Applicant has received financial counseling, that progress has been made on the debts at issue, or that Applicant's financial issues are now under control. Consequently, mitigating conditions 20(a)-(c) do not apply.

Based on the scant facts provided, there is insufficient evidence to show that Applicant has initiated a good-faith effort to repay overdue creditors or otherwise resolve his debts. No track record of financial stability has been presented, nor has a pattern of commonsense financial maintenance been put forward. Therefore, mitigating condition

20(d) does not apply. In addition, Applicant failed to establish or document a basis to dispute any of the debts at issue, obviating application of mitigating condition 20(e).

Guideline E, Personal Conduct

AG ¶ 15 articulates the security concern relating to personal conduct. It states that conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Here, on his February 2012 SCA, Applicant denied having had any delinquent debts turned over to a collection agency or having been over 120 days delinquent on any debt in the preceding seven years. The evidence shows, however, that this answer is incorrect. If his answer was intentionally false, or if there is evidence Applicant meant to conceal the truth, Guideline E disqualifying condition AG ¶ 16(a) would apply:

AG ¶ 16(a) deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

In the absence of an intent to deceive, as opposed to simple human error or mistake, falsity cannot be found. Here, there is no evidence of intentional falsity. A merely incorrect answer is not the same as intentional falsity or an attempt to mislead. Consequently, no disqualifying condition is raised.

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 adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on 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 incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 38-year-old network administrator who served in the United States military from 1998 through 2004. From 2004 through 2010, he was employed by a defense contractor, then unemployed from March 2010 through January 2011.

Applicant has held a security clearance most recently since 2007. Applicant is married with two minor children from a prior marriage which ended in divorce in 2011.

The SOR at issue reflects numerous delinquent debts amounting to over \$23,000. Although Applicant only admits a small percentage of that debt, he submitted no documentary evidence showing that any payments or quantifiable progress has been made toward addressing the debt at issue. He presented no documentary evidence providing a clear nexus between the alleged debts and any circumstances beyond his control, or indicating that he acted responsibly at the time. No documentation was presented showing a sound basis for disputing the debts at issue. In general, scant documentary evidence regarding these debts has been provided showing that Applicant has a realistic plan to address his debts and has implemented that plan toward the resolution of his financial distress.

The question in this case goes beyond whether the debts at issue are paid or otherwise resolved. The issue is whether Applicant's financial circumstances raise concerns about his suitability to hold a security clearance under both the guidelines and the whole-person concept. Here, while he supplemented the record with written narrative, there is insufficient documentary evidence to mitigate the finance-related security concerns raised. As security clearance determinations should err, if they must, on the side of denials, I find that Applicant has failed to meet his burden in this case.

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.m	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 1.a	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge