



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-09997
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

12/10/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant did not present information to mitigate financial security concerns.

Statement of the Case

On May 3, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated May 11, 2015, detailing security concerns for financial considerations under Guideline F. 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 in DOD on September 1, 2006.

Applicant answered the SOR on May 27, 2015, admitting the ten delinquent debts in the SOR. He stated he paid or is paying on three of the debts (SOR 1.b, 1.c, and 1.j), did not know or forgot about six of the debts, (SOR 1.a, 1.d – 1.i). He provided no documentation to show any payments on the debts. Department Counsel was prepared to proceed on July 31, 2015, and the case was assigned to me on August 31, 2015. DOD issued a notice of hearing on October 22, 2015, scheduling a hearing for November 3, 2015. I convened the hearing as scheduled. The Government offered four exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 4. Applicant testified but did not submit any exhibits. I received the transcript of the hearing (Tr.) on November 13, 2015.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 47 years old and has been a painter in a shipyard since 2007. He is married with three adult children. His net monthly income is approximately \$2,400, with \$2,000 in monthly expenses, leaving \$400 in discretionary income. (Tr. 17-18, 24-27; GX 1, e-QIP, dated May 3, 2012)

The SOR lists, and credit reports (GX 3, dated March 10, 2012; GX 4, dated October 23, 2014) verify the following delinquent debts for Applicant: a medical debt for \$473 (SOR 1.a); a charged off loan for \$328 (SOR 1.b); an insurance debt for \$203 (SOR 1.c); a medical debt for \$36 (SOR 1.d); a satellite company debt for \$658 (SOR 1.e); another debt to the same satellite company for \$819 (SOR 1.f); a debt for the purchase of a lawn mower for \$2,156 (SOR 1.g); a department store account for \$1,015 (SOR 1.h); a debt on a repossessed truck for \$8,145 (SOR 1.i); and a state tax debt for \$4,000 (SOR 1.j). The total amount of the debt in the SOR is approximately \$18,000.

Applicant was interviewed by a security investigator from OPM on April 18, 2012. Applicant told the security investigator that his home state tax returns were not filed or taxes paid from 2008 to 2010 because the person who filed his taxes did not have all of the documents required to file the state taxes. The state tax returns were filed in January 2012, and he owed state taxes of approximately \$4,000. He agreed to a payment arrangement with the state paying \$200 per month until the debt is resolved.

Applicant also told the investigator that he had a truck loan that was delinquent since 2005 because he did not have sufficient income to make the payments since 2005. He returned the truck to the dealer because of a mechanical problem in 2011. He has not made any payments and owes approximately \$8,000. He plans to make arrangements with the creditor to pay the debts.

Applicant recalled a personal loan that he has been unable to pay as noted at SOR 1.b. He told the investigator that he had a department store credit card go to default in June 2005 when he did not have sufficient income to make payments. (SOR

1.h) He has not made any payments on this card. He did not recall the accounts at SOR 1.e and 1.f. but he was going to check on them. He recalled the debt at SOR 1.g for a lawn mower. He stopped making payments on the loan when the lawn mower broke. He did not recall the other accounts or their status. (GX 2, Personal Subject Interview, dated April 18, 2012)

In his response to the SOR, Applicant noted that he did not know about the medical debts (SOR 1.a, and 1.d). He stated that he is making payments on the loan at SOR 1.b, and that he paid an insurance debt at SOR 1.c. He did not know about the debts at SOR 1.e, 1.f, and 1.g. He forgot about the department store account at SOR 1.h. He admits the debt for the truck loan and noted that he returned the truck to the creditor. (SOR 1.i) He admits that he owes state taxes and is paying the taxes under a settlement plan. (SOR 1.j) Applicant did not present any documents to support his statements.

Applicant testified at the hearing that he was not sure of the origin of the medical debts at SOR 1.a and 1.d but they could be for a family member. He was going to check on the debts and provide information on the status of the debts. Applicant stated he paid the loan debt at SOR 1.b and the insurance debt at SOR 1.c. He would provide verification of the payoffs after the hearing. (Tr. 17-20) The debts at SOR 1.e and 1.f are to the same television service provider. He called the company and they had no record of the debt at SOR 1.e. He did acknowledge the account for the television service provider at SOR 1.f and stated that the debt was paid off. He did not provide documentation about the status of any of the debts. (Tr. 20-21)

Applicant initially stated that he did not know about the debt at SOR 1.g. When advised that he told the security investigator in the personal subject interview about a loan debt for a lawnmower, Applicant remembered the debt. He made some payments on the loan, but when the lawnmower stopped working, he returned the lawnmower to the dealer and stopped paying the loan. He was to provide documentation on the status of the debt after the hearing. (Tr. 21-23) Applicant never made any payments on the department store credit card debt at SOR 1.h because he just did not want to pay them. (Tr. 23-24)

Applicant made some payments on the truck loan at SOR 1.i. When the truck broke down, he returned the truck to the dealer. He did not make any payments after he returned the truck. He has not been in contact with the creditor for the loan. Applicant was to contact the creditor and provide documentation concerning the status of the debt after the hearing. (Tr. 27-29)

Applicant stated that he has made payments according to a payment plan for his state taxes as noted at SOR 1.j. He believes the amount of the debt is now approximately \$1,000. Applicant was to provide documents on the status of the debt after the hearing. (Tr. 29-32)

Applicant was provided ample opportunity to submit documents to substantiate his claims concerning the status of his debts. Applicant did not provide any documents after the hearing.

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 must be considered 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, 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 in seeking 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 that the applicant may deliberately or inadvertently fail to 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

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. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is at risk of acting inconsistently with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant incurred debts that he could not satisfy. Even though he denied some of the debts because he had no knowledge of them, the credit reports validate the debts. The delinquent debts, as established by Applicant's admissions and the credit reports, raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The information indicates both an inability and an unwillingness to satisfy debt.

I considered the following Financial Considerations Mitigating Conditions under 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;
- (b) the conditions that resulted in the financial problems 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 has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

These mitigating conditions do not apply. Applicant has delinquent debts that are current and not resolved. Applicant has not established that he has paid any of his past-due financial obligations, or that he has a reasonable plan to pay any of his debts. He claims that he has no knowledge of some debts, but he acknowledged them in the personal subject interview, and they are verified by credit reports. He was to research his debts and provide information concerning their status. He claims to have paid or is paying some of the debts. He did not provide any documents to verify any of his claims. He did not present any information that he sought or received financial counseling. He did not provide any documents of a good-faith effort to repay debts. He has not presented any plans for a systematic method of managing his finances, nor has he shown a reasonable, prudent, and honest adherence to his financial duties and obligations. He has not shown that he has a systematic method of handling debts. He has not established a meaningful track record of debt payment.

Applicant has not shown that he manages his personal financial obligations reasonably and responsibly, and his lack of responsible financial conduct is likely to continue. There is ample evidence of irresponsible behavior, lack of good judgment, and financial unreliability. Based on all of the financial information, I conclude that Applicant has not mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 considered Applicant's over eight years of service in the shipyard. However, this information does not offset the significant information concerning Applicant's irresponsible management of his finances. Applicant did not present sufficient information to establish that he acted reasonably and responsibly towards his finances. His financial track record does not establish confidence that he has or will responsibly manage his financial obligations. This indicates that he will not be concerned or act responsibly in regard to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is denied.

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.j:	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.

THOMAS M. CREAN
Administrative Judge