



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-10273

Appearances

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

02/03/2016

Decision

HOWE, Philip S., Administrative Judge:

On October 31, 2011, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). On January 26, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on February 28, 2015. Applicant requested his case be decided on the written record in lieu of a hearing.

On June 25, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 5,

was provided to the Applicant on July 9, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on July 16, 2015.

Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on August 15, 2015.

Department Counsel submitted four items in support of the SOR allegations. Item 3 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on May 14, 2013. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

I received the case assignment on December 10, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant denied the allegations in Subparagraph 1.a and admitted the other two allegations. (Items 1, 2, 4, 5)

Applicant is 54 years old, married, and has one child from a former marriage. He also has an adult daughter from a high school romance. Applicant served in the U.S. Navy on active duty for three years. He works for a defense contractor and has since 2008. (Item 2)

The first SOR allegation is that Applicant owes \$17,382 on a company credit card he uses when he travels for the company to do work. He states in his Answer that the employer is responsible for paying the credit card debt after he submits his biweekly travel claim. Applicant claims he would not allow such a large debt to accumulate to jeopardize his ability to maintain his security clearance at his current age and work history. (Items 1, 4, 5)

Applicant admits the second allegation that he filed for Chapter 13 bankruptcy on or about March 1, 2010. He claims he is in the last month of that bankruptcy when he filed his Answer on February 28, 2015. He did not submit any documents when he was given the opportunity to do so in his Response to the FORM. The specific debts and arrangements of the bankruptcy were not disclosed. A discharge in bankruptcy has not been submitted. The credit reports in the FORM show at least \$400,000 in loans and revolving lines of credit were included in the Chapter 13 bankruptcy. Applicant's credit reports show a number of home mortgages, home equity, and lines of credit that were included later in his bankruptcy. (Items 1, 2, 4, 5)

Applicant admits filing the Chapter 13 bankruptcy alleged in the third paragraph in December 2009. He claims it was dismissed when his attorney went to another law firm. Then the bankruptcy petition was refiled in March 2010. Applicant claims his unemployment from June to December 2008 adversely affected his ability to pay his debts. Applicant claims the bankruptcy action resulted from that unemployment. He has been employed with his present company since December 2008. (Items 1, 2, 4, 5)

Applicant's e-QIP states he was unemployed from June to December 2008. Before that date and since 2008 he has been employed. (Items 2)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the 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, which are useful 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, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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.

According to 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 the applicant or proven by Department Counsel,

and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or 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. 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 relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2008 to the present, Applicant accumulated significant delinquent debt, including \$17,382 on one credit card, and he filed Chapter 13 bankruptcy in 2010.. These two disqualifying conditions are established.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only one mitigating condition might have partial applicability.

(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 (b) would apply if the loss of employment were shown by Applicant to have a substantial effect on his ability to repay his debts. In the past 12 years, Applicant has been unemployed six months. He failed to meet his burden of proof on that issue.

None of the other mitigating conditions apply. His financial behavior is current and ongoing. He has not had any financial counseling. Applicant's financial situation does not appear to be under control. He has not started a good-faith effort to repay the \$17,382 owed on his credit card. He spent so much money in the past years that he had to file bankruptcy to attempt to repay these debts. But he does not disclose what debts he entered into the Chapter 13 bankruptcy. He did not submit any evidence to show he disputed any of the debts. There is no allegation or evidence of affluence.

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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He filed Chapter 13 bankruptcy in 2009 and refiled in 2010 to resolve his delinquent debts, however the status of that bankruptcy petition is undocumented. Applicant displayed a lack of good judgment incurring the delinquencies. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on his company credit card. If Applicant's employer was to pay the credit card debt, it is reasonable to expect Applicant to notice some months earlier that

the debt was not being paid by the company and to take action to resolve it. He has not taken any action on his own to pay the debt or to have the company pay the credit card debt.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a to 1.c:	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.

PHILIP S. HOWE
Administrative Judge