



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



In the matter of:)
)
) ISCR Case No. 12-10609
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

06/20/2013

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On August 30, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DoD acted 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 DoD on September 1, 2006.

Applicant answered the SOR on November 30, 2012, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on February 27, 2013. The FORM was mailed to

Applicant and he received it on April 26, 2013. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted his response to the FORM on April 27, 2013 (Response 1-5). The case was assigned to me on June 10, 2013.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 51 years old. He was born in Afghanistan and came to the United States in 1986. He became a U.S. citizen in 1994. He is married and has three children. He has worked for his current employer, a defense contractor, since May 2012. The record contains no information on his educational background. He was unemployed between January and May 2012. From March 2000 to January 2012, he was self-employed as a commercial business owner.¹

The debts listed in the SOR are supported by credit reports from May 2012 and August 2012. The SOR sets out six debts amounting to about \$51,639. Applicant's finances became a concern in late 2011 and early 2012. His business slowed down because of the introduction of four similar businesses in the same area. He used credit cards to finance his business during this period and was unable to repay the debts. After his business closed, he was unemployed for several months until he started at his current contractor position in May 2012.²

The delinquent debt alleged in SOR ¶ 1.a is a credit card account in the amount of \$10,810. Applicant provided documentation that he settled this debt in April 2013. Although the account number does not match, the credit reports only list one account for this creditor. I find that there is substantial evidence that this debt was resolved.³

The delinquent debt alleged in SOR ¶ 1.b is a credit card account in the amount of \$6,608. Applicant presented evidence that the creditor sent him an Internal Revenue Service (IRS) Form 1099-C for this debt. However, the account numbers do not match, and Applicant had more than one account with this creditor. This debt is unresolved.⁴

The delinquent debt alleged in SOR ¶ 1.c is a credit card account in the amount of \$8,889. Applicant presented evidence showing that he entered a stipulated settlement with this creditor, which included monthly payments in the amount of about

¹ Item 3.

² Items 3-4.

³ Items 5-7; Response 1-2.

⁴ Item 5-7; Response 5.

\$476 beginning in July 2012 and concluding in June 2013. Although there are notations on the settlement page apparently indicating payment confirmation numbers, no actual proof of payments are included. This debt is unresolved.⁵

The delinquent debt alleged in SOR ¶ 1.d is a credit card account in the amount of \$9,885. Applicant provided documentation that he settled this debt in February 2013. Although the account number does not match, the credit reports only list one delinquent account for this creditor. I find that there is substantial evidence that this debt was resolved.⁶

The delinquent debts alleged in SOR ¶¶ 1.e and 1.f are for two credit card accounts with the same creditor in the amount of \$6,519 and \$8,928. Applicant presented no evidence concerning these debts. The dates of the last action associated with these accounts were in April and May 2011. These debts are unresolved.⁷

Applicant has deployed to hostile areas in support of U.S. forces. No further information is available about his activities.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 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

⁵ Item 5-7; Response 3.

⁶ Item 5-7; Response 4.

⁷ Item 5.

⁸ Item 4.

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. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of 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).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for 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. 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. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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.

With the exception of the settled debts listed in SOR ¶¶ 1.a and 1.d, all of Applicant's debts remain unresolved. He did not provide sufficient evidence to show that the debts are unlikely to recur. I find mitigating condition AG ¶ 20(a) does not apply. Applicant provided evidence that his business went broke and that he was unemployed for a time, which contributed to his financial problems. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. Although he recently contacted two creditors to settle those debts, he provided insufficient evidence to show he acted on the remaining debts. This demonstrates a lack of responsible behavior. I find AG ¶ 20(b) partially applies. Applicant failed to present evidence of financial counseling, and while two debts were settled, there is no clear evidence that Applicant's financial problems are being resolved or under control because several debts remain unpaid. There is no evidence that he has made a good-faith effort to pay the remaining debts. I find AG ¶¶ 20(c) and 20(d) only partially apply.

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 the 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 guideline 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 service to the U.S. military in hostile territory and the impact his business failure and subsequent unemployment had on his debt situation. However, he has not shown a track record of financial stability. The record lacks evidence that Applicant has made an overall good-faith effort to resolve his debts. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e – 1.f:	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.

Robert E. Coacher
Administrative Judge