



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



In the matter of:)	
)	
)	ISCR Case No. 12-10841 ¹
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

06/20/2016

Decision

CURRY, Marc E., Administrative Judge:

Although Applicant’s financial problems were caused by circumstances beyond his control, he failed to provide evidence documenting what progress, if any, he has made in addressing them. Clearance is denied.

Statement of the Case

On September 24, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. 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) implemented by the DOD on

¹The Statement of Reasons erroneously lists the caption as ISCR Case No. 12-0841.

September 1, 2006. On October 19, 2015, Applicant answered the SOR, denying all of the allegations, and requesting a decision without a hearing.

On November 30, 2015, Department Counsel prepared a File of Relevant Materials (FORM).² Applicant received the FORM on December 10, 2015. He did not submit a response. On March 1, 2016, the case was assigned to me.

Findings of Fact

Applicant is a 63-year-old married man with two adult children. He has a high school diploma, and has earned several vocational degrees over the years. In 2010, he earned a bachelor's degree. Since 1994, Applicant has worked for a federal contractor. Currently, he is a supervisor. He has had a security clearance since 2002. (Item 5 at 30)

Applicant has approximately \$40,000 of delinquent debt. He began falling behind on his debts after his wife was laid off in 2006. (Item 8 at 1) She has been unable to obtain steady income since then, and her employment problems have been compounded by chronic health problems.

SOR subparagraph 1.a is a \$22,776 loan. He is behind more than six months on his monthly payments. Applicant contends that SOR subparagraphs 1.a and 1.c are duplicates. He contends that he has negotiated an agreement with the creditor under which it has agreed to accept a one-time \$500 payment and successive \$250 monthly payments. (Item 4 at 2) Applicant provided no corroborating evidence either of this agreement or of his contention that this debt is a duplicate of SOR subparagraph 1.c.

Applicant contends that SOR subparagraph 1.b, a debt totaling \$9,767, was cancelled in 2014, and reported to the Internal Revenue Service to be filed with his income tax returns for that year. He provided no corroborating evidence. Applicant denies SOR subparagraph 1.d, but does not provide any evidence substantiating the basis of the dispute.

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.

²Applicant did not object to the admissibility of any of these Items, therefore, I have considered all of them in this 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, or mitigate facts admitted by applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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) Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debt; and
- (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 financial problems began in 2006 after his wife, whose income they needed to help make ends meet, lost her job. She has yet to regain full-time employment, as a subsequent chronic illness has compounded her ability to work. Applicant, however, provided no documentary evidence supporting either the steps that

he has allegedly taken to address his delinquent debts, or to substantiate the basis of the debt that he disputes. Under these circumstances, none of the mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Circumstances beyond Applicant's control contributed to his financial problems. However, he provided no supporting evidence documenting steps taken to get his financial problems under control. This failure to provide documentary evidence, compels me to conclude that he has not mitigated the security concern.

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.d:	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.

MARC E. CURRY
Administrative Judge

