



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



In the matter of:)	
)	
)	ISCR Case No. 12-10944
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

03/17/2016

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 5, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).

Applicant answered the SOR on June 13, 2015, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on October 8, 2015. The evidence

included in the FORM is identified as Items 3-6 (Items 1 and 2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on January 2, 2016. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any additional evidence nor did he object to any of the Government's evidence. Items 3-6 are admitted into evidence. The case was assigned to me on February 17, 2016.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the SOR allegations, except for SOR ¶ 1.e, which he denied. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 41 years old. He is married and has three children. He has worked for a federal contractor since 2008. Before September 2008, he worked in the private sector as a self-employed painter. He was unemployed for approximately eight months in 2008. He is a high school graduate. He has never held a security clearance.¹

The SOR lists five delinquent debts totaling approximately \$14,160. The debts include three collection accounts and two charged-off accounts. The debts are supported by credit reports from July 2012 and November 2014, Applicant's statement to a defense investigator in August 2012, and by Applicant's admissions.²

Applicant attributes his financial problems to his period of unemployment in 2008 and having to pay his mother's final expenses upon her death. He stated that he paid these bills in lieu of his other obligations. He did not provide supporting documentation.³

The status of the debts is as follows:

SOR ¶ 1.a – (charged-off account \$8,406):

Applicant admitted he owed this charged-off account for a recreational vehicle (RV). When he could not make the payments he turned the vehicle into the dealership. The RV was sold and Applicant was responsible for the deficiency. He claims he talked to the company about working out a payment plan, but no plan was presented in evidence. There is no evidence of payment or settlement. This debt is unresolved.⁴

¹ Items 3, 6.

² Items 2, 4-6.

³ Item 6.

⁴ Items 2, 4-6.

SOR ¶¶ 1.b – 1.c (a collection and a charged-off account: \$2,552; \$2,175):

Applicant admitted that he owed these debts. He has not paid the debts or set up any payment plans. He claims that SOR ¶ 1.b went to a judgment and that a monthly garnishment of \$50 was established. He did not present documentation supporting this assertion. He failed to present evidence of any payment plan or payments made on SOR ¶ 1.c. These debts are unresolved.⁵

SOR ¶ 1.d – (collection account \$748):

Applicant admitted owing this collection account. He claims to have contacted the creditor about setting up a payment plan, but he failed to produce documentation of such an established plan. This debt is unresolved.⁶

SOR ¶ 1.e – (collection account \$279):

Applicant denied owing this collection account. He failed to produce documentation supporting a dispute of this debt. This debt is unresolved.⁷

Applicant did not provide any information about his current financial status or a budget. There is no evidence that he sought financial counseling.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.

⁵ Items 2, 4-6.

⁶ Items 2, 4-6.

⁷ Items 2, 5-6.

⁸ Items 2, 6.

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. 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; 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 debts are recent and remain unresolved. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant presented some evidence that the debts were due to circumstances beyond his control (unemployment in 2008 and paying his mother's final expenses), but he failed to provide documentation showing that he acted responsibly under the circumstances. I find AG ¶ 20(b) partially applies. He did not provide documentation showing that the debts had been paid or that he established payment plans. There is no evidence of financial counseling. AG ¶¶ 20(c) and 20(d) do not apply. He did not produce documentary evidence to support his dispute of SOR ¶ 1.e. AG ¶ 20(e) does not 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 his period of unemployment. Applicant has not established a track record of financial stability.

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
Subparagraphs 1.a – 1.e:	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