



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



In the matter of:)	
)	
)	ISCR Case No. 12-11504
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

09/18/2014

Decision

LYNCH, Noreen A., Administrative Judge:

On March 26, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations). The action was taken under DOD Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated May 22, 2014.¹ Applicant received the FORM on June 2, 2014. He did not submit additional information for the record. I received the case assignment on September 12, 2014. Based on a review of the case file, I find Applicant has not mitigated the security concerns raised. Eligibility for a clearance is denied.

¹The Government submitted 13 items in support of its case.

Findings of Fact

In his answer to the SOR, Applicant admitted allegations under Guideline F, ¶¶ 1.a-1.v with the exception of three allegations. (Item 4)

Applicant is 38 years old. He is employed with a defense contractor. He graduated from high school in 1993. Applicant has attended college but has not obtained a degree. Applicant is married. Applicant has been employed with his current employer since May 2009, but he has been gainfully employed since 1998. On June 9, 2009, he completed a security clearance application. (Item 5)

The SOR alleges 20 delinquent debts totaling approximately \$37,433 including a state tax lien, collection accounts, judgments, medical accounts, student loans, and two bankruptcies. (Item 1) Credit reports confirm the debts. (Items 10,11, 12, and 13)

Applicant explained in his Answer that his financial issues began in 2003 when he could not afford his home mortgage loan, due to an adjustable rate. Upon legal advice, he filed for Chapter 13 bankruptcy in December 2004. Applicant was not able to make the required payments and the bankruptcy was dismissed in September 2005. (Item 7) About a month later in 2005, Applicant filed another Chapter 13 bankruptcy and included more delinquent debts. He made payments until 2008, but again he could not maintain the payments and the petition was dismissed in 2008. (Item 9)

In August 2012, during an investigative interview, Applicant explained that he made contact with creditors and paid some of his debts. In 2010, there were two garnishments of his pay for unpaid taxes and student loans. (Item 8) He also noted that he had medical accounts and had every intention of paying them. (Item 6)

When Applicant answered 2013 DOHA interrogatories, he admitted the SOR debts, stated that he was aware of the debts but did not have any payment arrangements for any of the debts. He noted that he was working with a credit agency to repair his credit. (Item 6) Applicant did not submit any documentation to support his assertions. He did not submit additional documentation in response to the FORM.

Applicant denied the state judgments in SOR 1.m, 1.n, and 1.o. He explained that they belonged to his father but he did not provide any information concerning the issue. The record is not clear as to the status of his student loans.

Applicant's net monthly income is \$4,981, which includes his wife's income. After expenses, he listed a net remainder of \$1,053. He noted that he was paying two car loan notes. (Item 6) There is no information in the record indicating that Applicant obtained financial counseling.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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." ⁵ "The clearly consistent standard indicates that security clearance

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a security clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.”

Applicant’s admissions and credit reports establish the collection accounts delinquent debts, judgments, student loans, state tax lien, and bankruptcies. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant’s financial difficulties make it difficult to conclude that it occurred “so long ago.” “An unpaid debt is a continuing course of conduct for the purposes of DOHA adjudications.” ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant still has unresolved delinquent debt. He has not provided sufficient documentation that he has addressed the SOR debts. The status of the student loans is not clear from the documented information. The delinquent obligations remain. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

acted responsibly under the circumstances) partially applies. Applicant stated that the financial difficulties occurred due to a home mortgage loan that he could not afford in 2003. He filed for bankruptcy, but the petitions were dismissed. However, he did not elaborate nor provide specific nexus to his current financial situation. As to the financial issues, Applicant has been on notice since 2012. He explained in his investigative interviews that he intended to pay his debts and was working with a credit repair company. He has not provided evidence that he has acted responsibly.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant made payments on one of his bankruptcies, but he could not maintain them. His garnishment addresses some debts. However, he has not provided any information that he has addressed the SOR delinquent debts. He did not present evidence that he received financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. Given the ultimate burden, I find that there are not clear indications that his financial problems are being resolved and are under control.

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 38 years old. He has worked for his current employer since 2012. It is not clear from the record whether he previously held a security clearance. Although there were some circumstances that occurred beyond his control, he did not establish that he acted responsibly under the circumstances. He has been on notice for several years and he has not produced evidence to show that he has mitigated the security concerns. I have doubts about his financial responsibility.

Because Applicant chose to have this case decided without a hearing, I am unable to evaluate his demeanor, or credibility. In relying on the written record, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and fully mitigate the financial security concerns.

The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. A denial of his eligibility for a security clearance does not necessarily indicate anything adverse about Applicant's character or loyalty. It means that Applicant has presented insufficient mitigation to meet the strict standards controlling access to sensitive information.

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.v: **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 a eligibility for a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge