



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



In the matter of:)
))
) ISCR Case No. 12-11624
))
))
Applicant for Security Clearance)

Appearances

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

05/28/2013

Decision

WHITE, David M., Administrative Judge:

Applicant accrued more than \$19,500 in delinquent debts over the past ten years. He made no progress toward resolution of any of them, and offered no evidence of an effective plan to resolve these debts or of changes to prevent continued financial irresponsibility. He deliberately falsified his security clearance application concerning these debts. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on November 19, 2010.¹ On January 11, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct).² The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960),

¹Item 4.

²Item 1.

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 effective in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on February 5, 2013, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on February 26, 2013. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on March 7, 2013, and returned it to DOHA. Within the 30 days provided to do so, he submitted no additional evidence, made no objection to my consideration of the contents of the FORM, and did not request additional time to respond. I received the case assignment on April 25, 2013.

Findings of Fact

Applicant is 44 years old, and has worked for a defense contractor since 2007. He has never held a security clearance, and has no prior military or Federal Government service. He graduated from high school and attended some college classes. He is married, with a ten-year-old child and two adult stepchildren.⁵

In his response to the SOR, Applicant admitted the truth of all factual allegations set forth in the SOR, while correctly noting that SOR ¶¶ 1.f and 1.j are duplicate listings of the same debt. He also provided an explanation that his false answers alleged in SOR ¶¶ 2.b and 2.c were based on his mistaken belief that the accounts in question were charged off and/or placed for collection more than seven years before he executed his SF 86 in November 2010. After eliminating the duplicate listing, the total due on Applicant's 14 delinquent charged off and collection debts alleged in the SOR, and supported by entries in the record credit bureau reports, is \$19,583. This includes a \$5,160 judgment entered against him for a credit card debt in January 2007. The reports indicate last-activity dates for the delinquent accounts ranging from 2003 to 2010.⁶ Applicant's admissions, including those made in response to DOHA interrogatories,⁷ are incorporated into the following findings of fact.

³Item 3.

⁴The Government submitted eight Items in support of the SOR allegations.

⁵Item 4.

⁶Items 1, 5, and 6.

⁷Items 7 and 8.

Applicant held a full-time job as a lead project engineer for a major company from April 2000 until April 2007, when he left to accept his present position. He told an investigator from the Office of Personnel Management (OPM) that his delinquent debts resulted from his irresponsibility. He said that he was not educated on the management of his finances and used bad judgement, not realizing that his irresponsibility would affect all aspects of his life in the future. He also said that he has not received any financial counseling.⁸

Applicant documented no payments or settlement arrangements toward any of the delinquent debts that he discussed with the investigator and in his response to the SOR, even though two were under \$35 and many were under \$200. He said that some had dropped off his most recent credit report, so he felt those debts were no longer valid. He submitted no information in response to the FORM, which clearly identified these deficiencies in his efforts to mitigate financial security concerns.⁹

Applicant submitted a personal financial statement reflecting a net monthly surplus of \$2,259 after paying \$2,783 in monthly living expenses and \$1,344 toward current debts. The statement also reflected total assets of \$29,500 in the form of a savings account and a 401(k) plan. Applicant did not explain where his significant monthly surplus income was spent.¹⁰

As alleged in ¶ 2 of the SOR, Applicant denied, on his SF 86, that he had any judgments entered against him, or accounts placed for collection or charged off within the past seven years. He knowingly discussed the judgment debt with the OPM investigator during the interview conducted less than a month after he certified the truth of his answers on the SF 86. The credibility of his explanation that he thought his bad debts were charged off or placed for collection more than seven years prior to signing his SF 86 in November 2010 is greatly weakened by the fact that he also denied having any debts delinquent for more than 90 or 180 days in his responses to the questions in Section 26m and n.¹¹ I find that his falsifications and omissions were deliberate.

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references describing his judgment, trustworthiness, integrity, 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.

⁸Item 8 at 7.

⁹Items 3 and 8; FORM.

¹⁰Items 3, 7, and 8.

¹¹Items 3 and 4.

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 (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant's SOR-listed delinquent debts arose over at least the past ten years, and remain completely unresolved. His financial problems resulted from his choices to incur debts for goods and services, while failing to meet those obligations despite steady employment. He provided no evidence of action or intent to satisfy these debts or avoid incurring additional delinquencies. The state of the evidence raises substantial security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 fourteen delinquent debts arose over the past ten years, total more than \$19,500, and continue to date. They are frequent, recent, and arose under circumstances that involved Applicant's voluntary choices. The ongoing nature of these debts precludes a finding of unlikely recurrence. Applicant failed to demonstrate that his reliability, trustworthiness, and judgment have improved, and failed to resolve any of these debts even after their security implications became apparent. The evidence does not establish mitigation under MC 20(a).

Applicant offered no evidence to support mitigation under MC 20(b). He admitted that his delinquencies arose due to his irresponsibility, and his inaction toward resolution of any of these debts is not responsible action under the circumstances.

Applicant denied undergoing financial counseling, and did not establish clear indications that the problem is being resolved or is under control. He provided no evidence to establish any good-faith effort to repay his many overdue creditors or otherwise resolve his debts. MC 20(c) and 20(d) are therefore inapplicable.

Applicant failed to provide proof to substantiate a basis to dispute the legitimacy of any of the debts alleged in the SOR, for which the record credit reports provide substantial evidence. Accordingly, he failed to mitigate those allegations under MC 20(e).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The DC alleged by the Government and supported by the evidence is:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or

similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admittedly made false “no” answers in response to questions asking about his financial delinquencies. His explanation that he was not aware of the details of his charged off and collection accounts is contradicted by his description of them to the OPM investigator less than a month later, and by his false answers to other financial questions. I specifically find that Applicant intended to conceal this information in connection with his attempt to qualify for a security clearance because he knew it would cause problems for him. Security concerns under AG ¶¶ 16(a) were raised by these facts.

Applicant offered insufficient evidence to support any mitigating condition under Guideline E. After careful review of the record, I find that none of them apply. He made no good-faith effort to correct his falsifications, and offered excuses that do not establish his credibility or capacity to be trusted to follow proper security procedures. His falsifications were made in connection with the application currently under adjudication, and he continues to attempt to justify them without accepting responsibility for his actions.

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 pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility spans many years, and continues at present. It involves delinquent debts totaling more than \$19,500, toward

which he had documented no payments by the close of the record. He has not shown the ability or willingness to fulfill his legal obligations to his creditors. He did not demonstrate that these debts arose under circumstances that were beyond his control, or that he initiated any changes to prevent additional financial difficulties. He offered no evidence of financial counseling, rehabilitation, good judgment, or responsible conduct in other areas of his life. The potential for pressure, coercion, and duress remains undiminished. These concerns are exacerbated by his attempt to conceal his financial irresponsibility on his SF 86 application seeking a security clearance. Integrity is crucial to the successful protection of sensitive and classified information, and to compliance with security procedures.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations and personal conduct.

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
Subparagraphs 1.a through 1.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.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.

DAVID M. WHITE
Administrative Judge