



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



In the matter of:)	
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Applicant for Security Clearance)	ISCR Case No. 13-00604

Appearances

For Government: Julie Mendez, Esq., Department Counsel
For Applicant: *Pro se*

11/05/2013

Decision

LYNCH, Noreen, A., Administrative Judge:

On June 19, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 hearing before an administrative judge. The case was assigned to me on September 9, 2013. A notice of hearing was issued on September 12, 2013, scheduling the hearing for October 17, 2013. Government Exhibits (GX) 1-7 were admitted into evidence, without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant Exhibits (AX) A-D for the record. I kept the record open until October 31, 2013 for additional submissions. Applicant provided a packet of receipts, which was marked AX E, and entered into the record without objection. The transcript (Tr.) was received on

October 24, 2013. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations, with the exception of ¶¶1.f and 1.j, with explanation.

Applicant is a 44-year-old aviation technician employed by a defense contractor. In 1987, he graduated from high school and attended a technical college. He is married and has one child. He has been with his current employer since June 2012. (GX 1) However, he has worked for the government as a contractor since 2000.

The SOR alleges Applicant has four unpaid default judgments; five collection accounts; and a past-due account. The alleged amount of delinquent indebtedness is approximately \$25,000.

Applicant explained that his first marriage, which ended in divorce (1993), resulted in child support for his son. At the time, Applicant was 21 years old. He paid child support directly to the mother and not the child support agency. When he presented receipts to the agency, they determined that the payments were a “gift.” As a result, he owed about \$33,000 in arrears. Applicant submitted documentation in the form of a payment history to the child support agency from 1993 until 2013. This history reflects that Applicant has paid \$321 a month. (AX B) Applicant also made a lump sum payment of about \$6,000 toward his child support arrearage. (AX C and D) This is not an SOR allegation, but Applicant believes this has contributed to having less money to pay debts. He is now current with the arrearage. It is not a delinquent debt.

When Applicant began a career in aviation, after unemployment from a steady job, he did not realize that he would have to relocate often. The physical moves were costly. Applicant also acknowledged that he opened two businesses which did not thrive and he lost money. He was left with delinquent debt, but did not want to file for bankruptcy. (Tr. 10)

Applicant admits that he had three accounts with a credit union. He believes that the judgment is a duplicate of one of the three collection accounts reflected in SOR 1.e, 1.g, and 1.h.

The judgment alleged in SOR 1.b for \$665 is a duplicate of the SOR 1.d. Applicant spoke to the attorney who is handling the account for the apartment complex. The judgments stem from 2009 when Applicant was unable to pay two rents. He had to relocate for his contract job and could not afford to pay both rents. (Tr. 36)

Applicant has contacted the account creditor in SOR 1.c. He intends to pay them \$815 in December. He spoke to the account representative and has an agreement. (Tr. 21) The company would not accept a partial payment. (Tr. 44)

Applicant has an agreement with the creditor for SOR 1.e. He has paid more than \$500, and has a balance of \$1,700. Each month the creditor will deduct \$370 from Applicant's bank account until the amount is paid. (AX E)

The credit union account for 1.f (\$2,000) is being paid through an automatic deduction of \$100 a month from Applicant's bank account. He has already paid approximately \$300. (AX E)

During the past two years, Applicant has paid many non-SOR debts. (GX 7) Applicant settled the credit union account in SOR 1.h in the amount of \$6,386 for \$2,300. (AX A)

Applicant denied SOR 1.i for \$186. He states that he has no balance. He paid the overdraft fee last year. (Tr. 38) (AX E)

As to the debt in 1.j, Applicant denies the debt. He filed a dispute in May 2013. (AX E) The account has been removed from his credit report.

Applicant's plan is to pay all the large credit union accounts and then pay the smaller debts. He attended credit counseling. He obtained the services of a company (three years ago). He believes he paid them about \$1,400. However, they did not do anything to help him. (Tr. 53)

Applicant's annual salary is approximately \$80,000. His net monthly remainder is \$844. He is current on his monthly expenses. Applicant's student loan is current. He has a retirement savings plan. He has no new debts.

Applicant was candid and forthright. He has not ignored his creditors. He did not want to file for bankruptcy. He believes that in the future he will not have to move as frequently for his contract positions. His son is now emancipated. Applicant fully disclosed the situation on SF-86 and during his investigative interview.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ 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 clearance.

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to 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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant has delinquent debt in the amount of approximately \$25,000. Consequently, the evidence is sufficient to raise disqualifying conditions in ¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

(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 delinquent debts are being addressed. He was candid about the moving expenses incurred so that he could maintain contract jobs. He also explained the situation with child support. He did not overlook his duties to his child. He has paid some accounts in full. He has payment plans for the others. Applicant obtained financial counseling. He tried to utilize a company a few years ago to help him resolve issues, but it did not help him. Applicant disputed one account and has provided documentation. He provided sufficient mitigation to show his good-faith efforts and to prove that the situation is 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 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 a 44-year-old employee of defense contractor. He has supported his child and paid child support for many years. He has been gainfully employed. He has addressed his delinquent accounts. He has paid other non-SOR debts over the years. He has a track record and a plan to resolve the remaining delinquent debts. He provided sufficient documentation to mitigate the financial considerations security concerns. I have no doubts about his reliability or judgment. Applicant was candid and forthright at the hearing. Applicant has met his burden of proof. Clearance is granted.

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: FOR APPLICANT

Subparagraphs 1.a-1.j: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge