



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 13-01032

Appearances

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

10/29/2014

Decision

HOWE, Philip S., Administrative Judge:

On September 12, 2013, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On March 11, 2014, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on June 19, 2014. Applicant offered explanations of the two debts listed in the SOR. Applicant requested his case be decided on the written record in lieu of a hearing.

On July 15, 2014, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on July 16, 2014. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on July 22, 2014. Applicant filed a Response to the FORM within the 30 day time allowed that would have expired on August 21, 2014. Department Counsel had no objection to the admission into the file of these documents.

I received the case assignment on October 1, 2014. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted the allegation in Subparagraph 1.a concerning a bank debt. He denied the allegation in Subparagraph 1.b. concerning another debt. (Items 1-4)

Applicant is 56 years old, He is married. His e-QIP lists six children of various ages from about 30 years old downward. Applicant works for a defense contractor. (Item 5)

The SOR lists two delinquent debts owed by Applicant. They total \$28,584. The first debt is owed to a bank on a judgment for \$23,040 (Subparagraph 1.a). This debt dates from 2010. Applicant admits this debt and stated in his Answer that the money was being garnished from his paycheck. He did not explain the origin and purpose of the debt. Applicant's Answer stated he tried to arrange monthly payments of \$450 on the debt but could not continue them because of the financial demands of his other monthly expenses. So he allowed the money to be garnished. Applicant's Response states "arrangements are being made to pay this off." This debt is unresolved. (Items 3, 6, 8, FORM Response)

The second debt is owed to another bank in the amount of \$5,544 and is the subject of a judgment (Subparagraph 1.b). The debt dates from 2008. Applicant told the government investigator in December 2013 that he did not know the origin of the debt. He was trying to contact the local courts that granted the judgment to determine the basis of the debt. He also stated in his Answer he was disputing the debt because the case number is "not associated with his name." Applicant disputed the \$5,544 debt by stating in his Answer and the Response to the FORM that his research showed it was not his debt. He stated the second debt remains on his credit report dated August 14, 2014. He claims the bank told him he is not the debtor and to send a letter to the credit

reporting agency to have the debt removed from his record. Applicant did not submit any documents from the creditor concerning this debt and his alleged non-obligation to pay it. Nor did he submit any letter to the credit reporting agency asking it to remove the debt from his record with supporting justification. This debt is unresolved. (Items 3, 6, 8, FORM Response)

The two delinquent debts appear on the two credit reports submitted as exhibits by the Department Counsel. The reports are dated December 7, 2013; and July 9, 2014. These credit reports also show numerous borrowings and debt repayments. On the 2013 report there are seven collection actions listed. (Items 6, 8)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, 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.

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 and mitigating conditions, which are useful 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, the administrative judge applies the guidelines 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(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.

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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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. See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations.

Based on two credit bureau reports and his admissions, Applicant has been unable or unwilling to satisfy his two delinquent debts that began accruing in 2008 and remain unpaid at the present. The debts total \$28,584. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 set forth conditions that could mitigate financial security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's financial delinquencies have been ongoing since 2008, remain unresolved, and are not isolated. Accordingly, there is insufficient evidence to support a finding that the indebtedness is unlikely to recur or continue. Hence, AG ¶ 20(a) does not apply.

He did not present credible evidence to corroborate his assertions that the accumulation of the debt was due to conditions beyond his control or that he attempted

to responsibly manage that debt once as it accrued. Therefore, mitigating condition AG ¶ 20(b) does not apply.

Applicant established no mitigation under AG ¶ 20(c). He did not submit evidence that he received credit counseling or that he paid or resolved any debt, which would indicate that the situation is coming under control.

Applicant did not present evidence that he made a good-faith effort to pay or resolve either of the two debts. AG ¶ 20(d) does not apply without any such evidence.

Applicant did not provide documentation verifying that he formally disputed or investigated any debt, including the second debt that he denied, which evidence is necessary to trigger the application of AG ¶ 20(e).

There is no evidence to support the application of AG ¶ 20(f). No affluence of any type was shown.

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). They include the following:

- (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 the facts and circumstances surrounding this case. Applicant is a mature individual. In December 2013 the Government informed Applicant of its concern about these two delinquent debts. In March 2014 the government filed the FORM. For seven months, he

has been on notice that his delinquent debts were creating security concerns and potentially affecting his employment.

Despite that knowledge, he did not provide proof that he had taken any steps to address the two delinquent debts. He stated he allowed money to be garnished to pay one debt. In his Response to the FORM Applicant claimed he was trying to arrange a payment schedule. Applicant has not submitted any documents by either creditor to evidence his efforts to repay the first debt or dispute the second debt. Applicant writes only short and vague statements concerning the debts unsupported by any objective documentation.

Applicant failed to demonstrate financial rehabilitation, which is required to assure the Government that the recurrence or continuance of these unaddressed obligations is unlikely. The record contains insufficient other evidence about his character, trustworthiness, or responsibility to mitigate these concerns or make their continuation less likely.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations.

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 and 1.b:	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.

PHILIP S. HOWE
Administrative Judge

