



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



In the matter of:)	
)	
)	ISCR Case No. 13-01147
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

12/10/2014

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant had two collection accounts totaling more than \$50,000 and was past due on his \$300,000 mortgage. He has not resolved his delinquent accounts. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on November 19, 2013, the DoD issued a Statement of Reasons (SOR) detailing security concerns. DoD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

¹ 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) effective within the DoD on September 1, 2006.

In Applicant's undated answer to the SOR he elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated April 21, 2014. The FORM contained nine attachments. The FORM was re-sent² on September 23, 2014

On October 8, 2014, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant had 30 days in which to submit any material in response to the FORM. A response was due on November 7, 2014. As of December 4, 2014, no response had been received. On December 5, 2014, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he denied owing the collection account listed in SOR 1.a, \$49,141; admits being 120 or more days past due on the debt in SOR 1.b, \$303,000; and admits the collection account listed in SOR 1.c, \$2,647. After a thorough review of the pleadings, and exhibits, I make the following additional findings of fact:

Applicant is a 63-year-old software quality assurance engineer who has worked for a defense contractor since February 2009, and seeks to obtain a security clearance. The FORM contains no documentation of work or character references. He provided no documents concerning his delinquent accounts. In May 2008, Applicant's clearance was denied due to financial considerations security concerns. (Item 6)

In 2012, Applicant had dental work done and incurred a \$2,647 bill (SOR 1.c). He has not paid the delinquent account, and it was turned over for collection. (Item 6) He refused to pay the bill because he believed the dentist had doubled the amount owed for the dental implant. In July 2013, he completed a Personal Subject Interview (PSI) in which he stated he intended to resolve the dental bill. (Item 6) The delinquent account remains unpaid.

In December 1998, Applicant purchased a home. (Item 7) The record does not reflect the original purchase price. In March 2002, a \$255,540 mortgage was purchased by a different mortgage lender. The terms of the mortgage required \$1,763 monthly payments for 25 years. (Item 7) In March 2004, the mortgage was transferred to a new mortgage holder. The new mortgage was for \$303,000 with \$2,511 monthly payments for 30 years. (Item 7) As of mid-2006, Applicant was late making his payments. (Item 7) In 2007, Applicant's home was returned to the mortgage holder. He provided no documentation as to why he chose to return the home to the lender. He believes because the mortgage was secured by the home that the return of the house negates any further indebtedness. The house has been sold since he surrendered it. In his SOR answer he stated, "I turned the title over to [lender] for an agreed amount of cash." The

² The record contains no information why the FORM was resent.

\$303,000 mortgage debt (SOR 1.b) remains unpaid. Following the surrender of his home, he moved in with his father.

In addition to the first mortgage, Applicant owed approximately \$50,000 to two other mortgage lenders. In October 2013, the \$49,414 delinquent account was turned over to a collection firm. (Item 7) In October 2013, the delinquent account was transferred to a new collection firm. (Item 8) He has made no attempts to resolve his debts with the mortgage holders. In his undated SOR answer, he asserted he was paying \$100 monthly on the \$50,000 (SOR 1.a) debt. He provided no documentation showing actual payment on the debt.

Applicant was divorced three times: in April 1979, September 1991, and June 2004. He provided no documentation as to the financial impact of the divorces. He was unemployed from May 2002 through January 2003 and April 2005 through July 2006. (Item 5) Between October 2005 and December 2012, he took 11 vacations to various overseas locations. The vacations were normally six to ten days and involved vacations to the Netherlands, Mexico, Honduras, Ecuador, Jamaica, Thailand, Costa Rica, and Belize.

Applicant's September 2014 Personal Financial Statement (PFS) listed monthly income of \$4,571, and other expenses of \$3,055, which included \$1,000 for miscellaneous, entertainment, transportation, etc. His net monthly remainder (monthly income less monthly expenses) was approximately \$1,500.

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 must be considered 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.

The protection of the interests of 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant 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 the applicant may deliberately or inadvertently fail to safeguard 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 (EO) 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt

free, but is required to manage his finances to meet his financial obligations. His current net monthly remainder (monthly income less monthly expenses) is approximately \$1,500.

Applicant purchased a home with a first and second mortgage. He failed to properly pay the mortgages. In 2007, he turned the house's title over to the primary mortgage holder. The credit report lists the \$303,000 first mortgage as 120 or more days past due. The secondary mortgage holder lists the \$49,141 delinquent obligation as having been placed for collection. Applicant's \$2,647 dental bill was turned over for collection when he failed to pay it. He has not provided proof of payments on his delinquent accounts. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(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 meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. He indicated he had been unemployed from May 2002 through January 2003 and April 2005 through July 2006 and divorced three times. He provided no information as to how his periods of unemployment or divorces, which were events beyond his control, financially impacted his decision to return his home in 2007 to the mortgage lender. While he may have surrendered the home, he did not provide documentary evidence to establish the surrender resolved the first or second mortgage.

Applicant has not paid or resolved the SOR debts including the smaller dental bill incurred in 2012, which he stated in his July 2013 PSI he intended to resolve. He has not acted responsibly in addressing his debts. He provided no evidence he has received credit or financial counseling. He has not demonstrated that his financial problems are under control or that he has a plan to resolve the SOR debts. He has not made a good-faith effort to satisfy his debts.

AG ¶ 20(a) does not apply because the delinquent debts remain unpaid and because they remain unpaid, they are considered recent. There is nothing in the record supporting that conditions under which the debts were incurred were unusual. Applicant was on notice of the Government's concern about these delinquent obligations starting in July 2013. Given sufficient opportunity to address his financial delinquencies, Applicant has failed to act timely or responsibly under the circumstances. Failing to pay the debts casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant experienced two periods of unemployment with the latest period of unemployment ending in July 2006, more than eight years ago. He was also divorced three times with his last divorce occurring in June 2004, which is more than ten years ago. These are events beyond his control; however, he failed to establish how his unemployment eight years ago and his most recent divorce ten years ago have impacted his current ability to pay his debts.

The mitigating condition listed in AG ¶ 20(c) does not apply. There is no documentation Applicant received counseling or that his financial obligations are being addressed. The mitigating condition listed in AG ¶ 20(d) does not apply because Applicant has failed to document payment on any of the delinquent accounts. He asserted he was paying \$100 monthly on the \$49,000 second mortgage, but failed to provide any documents showing payment on this debt.

The mitigating condition listed in AG ¶ 20(e) does not apply. Applicant states he believes the dentist overcharged him for an implant. However, he has not provided documented proof to substantiate the basis of the disputed account.

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 the facts and circumstances surrounding this case. Applicant has been aware of the Government's concern about his delinquent debts since his July 2013 PSI, which was reinforced in the November 2013 SOR. He purchased a home and chose, for reasons not set forth in the record, to return it to the mortgage lender. He asserts, but provides no documentation, that the surrender of the home negates any further financial responsibility for the first or second mortgage. Additionally, he has yet to pay a delinquent dental bill.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances and facts which would mitigate the financial considerations security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debts. He failed to provide such information, and by relying solely on his brief explanation in response to the SOR, he failed to mitigate the financial considerations security concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Applicant expressed the hope that all of his financial difficulties would be resolved by December 2014. Under Applicant's current circumstances, a clearance is not recommended. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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 Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a - 1.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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge