



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



In the matter of:)	
)	
)	ISCR Case No. 13-01262
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

04/13/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On May 1, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing 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; Department of Defense (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 January 23, 2015. A notice of hearing was issued on February 2, 2015, scheduling the case for March 26, 2015. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified and presented two documents for the record (AX A-B). I kept the record open for a submission. Applicant did not submit any documents. The transcript was received on April 3, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant denied the SOR allegations under Guideline F, with the exception of ¶¶ 1.a and 1.b. Applicant explained that the other accounts alleged were paid.

Applicant is 30 years old. He graduated from high school in 2003. He is a telecommunications specialist. Applicant and his wife separated in 2005, and they divorced in 2013. He has two children from his first marriage. He remarried in late 2013. Applicant has been with his current employer since May 2011. This is Applicant's first request for a security clearance with the DOD¹. (GX 1)

The SOR alleges delinquent debts, including medical accounts, collection accounts, and a car repossession totaling about \$23,000.

As to SOR allegation 1.a, Applicant admitted that he owed this debt in the amount of \$171. He notes that he paid the account, but it is still on his credit report. He believes he paid the account last year. (Tr. 23) Applicant does not have any documentation to support his claim. He argues that it does not appear on his current credit report. (Tr. 59)

As to the SOR allegation 1.b, Applicant admitted the debt in the amount of \$1,263, and acknowledged that it was not paid. (Tr. 24) As to SOR allegations 1.c through 1.g, Applicant denied them because he stated that he paid them last March. (Tr. 24) Applicant stated that he attached information and documentation to his answer. There was no documentation in the record. (Tr. 26)

As to the SOR allegation 1.h, Applicant disputes this debt in the amount of \$736. He reported to the police that his ex-wife obtained a credit card in his name. He claims that he has never had an account with the particular credit card company. (Tr. 27) It is still on an older credit report but not his most recent one. (GX 4)

Applicant denied he owed the remaining accounts because he stated that he paid them in March 2014. He had no documentation to support his position. (Tr. 30) Applicant stated that when he received his tax refund in March 2014, he paid his delinquent debts. (Tr. 33) Applicant stated that he did not have any documentation because he has moved and did not keep copies. (Tr. 52) Applicant testified that he would attempt to obtain documentation from his debit account, but he did not submit additional information. (Tr. 52)

Applicant explained that the allegation in SOR 1.i is for the 2011 car repossession. He missed payments for a time but since September 2010, he has made monthly payments. (Tr.14) He stated that he paid \$,2000 to have the car returned to

¹Applicant stated that he held a top secret clearance with another agency.

him. His credit report shows a balance of \$11,040 down from \$15,000. (AX B) His monthly payments are \$500. (Tr. 32)

Applicant incurred financial difficulties as a result of his divorce. He inherited a great deal of debt from the marriage. He was candid that he bought anything that his wife wanted. She did not work and he paid the bills. He also noted that when the government shut down in 2013, for 17 days he could not pay his bills. (Tr. 13) He noted unemployment from February to May 2011. (Tr. 46) Applicant has paid child support for his two children from his first marriage.

Applicant's current position is stable. He earns \$56,000 a year. He submitted a note from his employer for good work performance. (AX A) His wife also works, and he believes that she earns about \$67,000. They share expenses. He pays child support for his two children. Applicant is current with all his expenses. (Tr. 31) He uses a budget. Applicant's net monthly remainder is about \$350. He acknowledged that he has a credit card that is currently at its maximum. (Tr. 63)

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 U.S. 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 determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive 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 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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.

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

⁷ *Id.*

Applicant had delinquent debts. 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.

Applicant incurred delinquent debt after a separation and divorce. He also referred to the government shut down in 2013 that affected his income. He still has unresolved debt despite steady employment. 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.

Financial Considerations Mitigating Condition (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 acted responsibly under the circumstances) partially applies. As noted above, Applicant's financial difficulties are a combination of separation and divorce. However, it is not clear that he acted responsibly. He is making car payments on the vehicle that was repossessed. This partially applies.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has limited application. Applicant states that the majority of the delinquent debts are paid. However, he has not provided any documentation to support his claim. FC MC AG ¶ 20(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) does not apply.

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 30 years old. He provides for his family. He has a favorable recommendation from his employer.

Applicant states that the majority of his financial difficulties stem from his separation and divorce. He notes that he paid the majority of the delinquent debts on the SOR, but he provided no documentation. It does appear that he is making payments on the car, which was originally repossessed. Any doubts must be resolved in favor of the Government. Without any documentary evidence, Applicant has not mitigated the security concerns under the financial considerations guideline. He has not met his burden of proof.

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.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m-n:	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. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge