



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



In the matter of:)	
)	
)	ISCR Case: 13-01253
)	
Applicant for Security Clearance)	

Appearances

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

05/28/2014

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated approximately \$21,000 in delinquent debts since 2009. He paid about \$2,000 of that debt over the last year. After receiving the SOR in late 2013, he began resolving the remaining debt. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On August 12, 2013, Applicant submitted a security clearance application (SF-86). On December 19, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on January 13 and 27, 2014 (Items 3, 4.), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) Department Counsel submitted the Government's written case on February 20, 2014. A complete copy of the File of Relevant Material (FORM), containing six Items, was provided to Applicant on said date, 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 February 25, 2014, and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA). He did not provide additional information in response to the FORM within the 30-day period. DOHA assigned the case to me on May 12, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted the four allegations contained in the SOR, and provided information and explanations. (Items 3, 4.)

Applicant is 33 years old. He served on active duty in the Army from August 2001 to February 2005, when he was honorably discharged. Subsequently, he worked in private industry. In about 2010 he became an IT specialist for a federal contractor. In April 2011 he started his present position with another defense contractor as a computer operator. Applicant was married in 2000 and divorced in November 2009. He and his former wife have two children for whom he pays child support. He married his current spouse in 2011. (Item 5.)

On January 7, 2014, Applicant entered into an agreement with a debt consolidation company to resolve two SOR-listed debts that totaled \$18,119. He agreed to make monthly payments of \$358 beginning on February 1, 2014. As part of the debt management program, Applicant drafted a budget. His net monthly income is \$3,797 and includes a \$1,200 VA disability payment he recently began receiving. His expenses, child support, and debt reduction payments total \$3,237, leaving \$200 remaining at the end of the month. (Item 3.) There is no evidence that Applicant began making the monthly payments in February 2014 on the debt consolidation plan.

Although not alleged in the SOR, Applicant owes his former spouse \$13,000 for payments on her residence. He verbally agreed to begin making those payments after other debts are paid. (Item 5.)

Based on a credit bureau report (CBR) dated December 2013, the SOR alleged four delinquent debts totaling \$20,785 and dating back to 2009. (Item 6.) Applicant attributed the delinquent debts to his divorce, and an increase in child support payments in February 2013 and September 2013 that resulted in arrearages. (Item 3.) The status of each debt is as follows:

1. The \$3,258 debt alleged in SOR ¶ 1.a is owed to the law firm that handled Applicant's 2009 divorce. It is included in the January 2014 debt repayment plan. It will be paid at \$82 per month. (Item 3.) It is unresolved.

2. The \$14,861 debt alleged in SOR ¶ 1.b is owed to a creditor for items purchased by Applicant and his former wife for a business they started. It is included in the January 2014 repayment plan. It will be paid at \$261 per month. (Item 3.) It is unresolved.

3. The \$1,414 debt alleged in SOR ¶ 1.c is owed to a credit card company. Applicant has made 11 payments of \$100 on the debt since February 2013. The balance is \$589. (Item 3.) It is being resolved.

4. The \$1,252 alleged in SOR ¶ 1.d is owed to a state for child support. As of December 2013 Applicant owed a balance of \$266 in arrearages, but was otherwise current on his monthly payment of \$782. (Item 5.) This debt is being resolved.

Applicant paid \$2,000 of the \$20,785 SOR-listed debts. He provided no solid explanation for not addressing his debts sooner than 2013. He submitted 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 provided no character references describing his judgment, trustworthiness, integrity, or reliability.

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 (AG) list potentially disqualifying conditions and mitigating conditions, 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 relating to 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Since 2009 Applicant accumulated delinquent debts that he has been unable or unwilling to satisfy until sometime in 2013. The evidence raises both security concerns, 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 delinquent debts began accumulating in 2009, the bulk of which continue to date. Because he failed to seriously address two of the debts until 2013, and did not offer evidence he made payments on the other two delinquent accounts, he did not demonstrate that such problems are unlikely to continue or recur. His reliability and trustworthiness in managing delinquent debts remain a concern. The evidence does not support the application of AG ¶ 20(a).

Applicant provided some evidence that his financial problems arose as a result of his 2009 divorce and a subsequent increase in child support. Those were circumstances beyond his control. However, he failed to provide evidence that he acted responsibly under the circumstances or that he attempted to resolve the debts while they were accumulating, despite full-time employment over the years. AG ¶ 20(b) has limited application.

Applicant provided some evidence that he participated in financial counseling as part of a debt management plan he started in January 2014. He has been addressing

the SOR-listed debts in ¶¶ 1.c and 1.d, both of which are now coming under control. In January 2014 he placed his largest two debts on a debt repayment plan. However, he did not submit proof that he made the February or March 2014 payments, although he was given an opportunity to do so. Hence, AG ¶ 20(c) has no application to the SOR-listed debts in ¶¶ 1.a and 1.b, as there are not clear indications that those problems are under control. Applicant's proof of on-going payments on two debts also indicates a good-faith effort to resolve those debts. Hence, AG ¶ 20(d) has application to the SOR-listed debts in ¶¶ 1.c and 1.d.

There is no evidence that Applicant had a reasonable basis to dispute any delinquent debt and successfully resolved it through the dispute process. AG ¶ 20(e) has no application.

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.

According to 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 a 33-year-old former soldier and current employee of a defense contractor where he has worked since 2011. Prior to this position, he has been fully employed since leaving the Army in 2005. In August 2013 he completed a SF-86 in which he disclosed delinquent debts. In December 2013 the Government issued a SOR informing him that delinquent financial obligations were jeopardizing his security clearance and employment. In early January 2014 he answered the SOR, and indicated that he just entered into an agreement to repay about \$18,000 of the SOR-listed debts that had been delinquent since 2009. At the end of February 2014, the Government sent him the FORM, arguing that his security clearance should be denied, and specifically noting that he failed to submit proof that he made payments on his debt repayment plan. The FORM gave him 30 days

to respond with further information. He failed to do so. Although Applicant has been paying off two debts, he failed to establish a track record of responsibly managing or resolving the other two debts totaling \$18,119.

Overall, the record evidence leaves me with 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 under the guideline for 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
Subparagraphs 1.c and 1.d:	For 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.

SHARI DAM
Administrative Judge