



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



In the matter of:)	
)	
)	ISCR Case: 13-01264
)	
Applicant for Security Clearance)	

Appearances

For Government: Greg Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

06/27/2014

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated approximately \$39,800 of delinquent debts since 2007. About four months ago, he began making small monthly payments on one 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 3, 2013, Applicant submitted a security clearance application (SF-86). On December 30, 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 February 1 and March 10, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) On March 26, 2014, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was provided to Applicant on March 29, 2014, 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 April 30, 2014, and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA). He provided additional information in response to the FORM within the 30-day period. Department Counsel had no objection to Applicant's documents, marked as AE 1 through 13, and they are admitted into evidence. DOHA assigned the case to me on June 19, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted nine of the ten allegations contained in the SOR. He denied the allegation in SOR 1.h. (Items 4, 6.)

Applicant is 30 years old and recently married. (AE 2.) He graduated from high school in 2002. He attended two semesters of college. From January 2002 to April 2013, he worked as a sales associate. Beginning in April 2013 he started working as a security guard for a defense contractor. (Item 4.)

Applicant attributed his financial problems to low-paying positions over the past ten years and being unable to pay his bills. As a result he used credit cards for living expenses. While his current position has enabled him to pay some expenses, he continues to have difficulty paying rent and other items on his minimum wage salary. He appreciates the stability of his position, but commented that the drive to work is long and expensive. (Item 7; AE 2.)

Based on a credit bureau report (CBR) dated August 2013, the SOR alleged ten delinquent debts totaling \$39,834, and dating from May 2007 to July 2013. (Item 6.) The status of each debt is as follows:

1. The \$3,766 debt alleged in SOR ¶ 1.a is a judgment owed to a credit card company. It is unresolved.
2. The \$4,644 debt alleged in SOR ¶ 1.b is owed to a credit card company. It is a collection account that has been charged off. It is unresolved.
3. The \$3,975 debt alleged in SOR ¶ 1.c is owed to a bank for a credit card. It is a collection account that has been charged off. It is unresolved.

4. The \$729 debt alleged in SOR ¶ 1.d is owed to a bank for a credit card. It is a collection account that has been charged off. It is unresolved.

5. The \$2,424 debt alleged in SOR ¶ 1.e is owed to a bank for a credit card. It is a collection account that has been charged off. It is unresolved.

6. The \$2,012 debt alleged in SOR ¶ 1.f is owed to a bank for a credit card. It is a collection account that has been charged off. It is unresolved.

7. The \$6,376 debt alleged in SOR ¶ 1.g is owed to a credit union. It is unresolved.

8. The \$7,065 debt alleged in SOR ¶ 1.h is owed to a credit union. Despite Applicant's denial of this debt, the evidence indicates that it is his debt. It is unresolved.

9. The \$3,181 debt alleged in SOR ¶ 1.i is owed to a university. It is unresolved.

10. The \$5,662 debt alleged in SOR ¶ 1.j is a federal student loan. Applicant began making small monthly payments in March 2014. (Items 11, 13.) It is being resolved.

Applicant recently began resolving a federal student loan; however, the other nine SOR-listed debts remain unresolved. Applicant argued that because some debts do not appear on his June 2014 CBR, he is no longer responsible for them. That is incorrect. He continues to be responsible, as the debts have not been paid or resolved, but instead removed as charged-off accounts. (AE 4.) There is no evidence that he obtained credit counseling or sought assistance with a debt consolidation company at any time over the last seven years. He did not provide a budget. 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.

In 2007 Applicant began accumulating delinquent debts that he has been unable or unwilling to satisfy through the present. 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 2007, all of which continue to date, except one which he recently started to resolve. Because he failed to address any of the debts until March 2014, 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 low-paying positions. 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 over the years. AG ¶ 20(b) has limited application.

Applicant has not participated in financial or credit counseling, and there are no clear indications that his delinquent debts are under control. Hence, AG ¶ 20(c) has no application. Applicant has made monthly payments on his federal student loans listed in SOR 1.j since March 2014. His action on that debt demonstrates a good-faith effort to resolve it. Hence, AG ¶ 20(d) has some application to that debt. There is no evidence that Applicant had a reasonable basis to dispute any delinquent debt and successfully resolve 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 30 years old and recently married. He has experienced financial problems since approximately 2007, some of which he attributes to low-paying jobs. Over the course of the past seven years he has not sought financial counseling or assistance with these problems. While he stated that recently his financial situation is improving, the multiple financial delinquencies continue to be significant and unresolved. The initiation of a small repayment plan for Applicant's federal student loan is a positive sign of responsible financial management; however, it is inadequate to mitigate the financial security concerns that have arisen as a result of a large amount of delinquent debt.

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 through 1.i:	Against Applicant
Subparagraph 1.j:	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