



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



In the matter of:)	
)	
)	ISCR Case No. 13-01293
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

06/04/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 2, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant submitted an undated response to the SOR and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on March 24, 2014. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on April 18, 2014. His response, dated May 11, 2014, has been marked Applicant's exhibit (AE) A. The case was assigned to me on June 3, 2014. The Government exhibits included in the FORM and AE A are admitted without objection.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer since July 2010. He served in the U.S. military from 1988 until he was honorably discharged in 1997. He attended a technical school for engineering and advanced computer education. He married in 2000 and divorced in 2009. He married his second wife in 2009. He anticipates that they will divorce in September 2014. He has four children between the ages of 10 and 13. He also has two stepchildren who are young adults.¹

The SOR alleges three delinquent debts: SOR ¶ 1.a (\$21,990), SOR ¶ 1.b (\$11,190), and SOR ¶ 1.c (\$292). Applicant admitted owing the debts, and all of the debts appear on at least one credit report. However, the credit reports establish that Applicant is only an authorized user of the \$21,990 delinquent credit card debt alleged in SOR ¶ 1.a. He indicated that "some part of this debt [was] incurred by marriage."²

SOR ¶ 1.b alleges an \$11,190 charged-off account. Applicant's credit reports indicate it is a car loan that was opened in March 2011 with a high balance of \$43,485. The last action on the account was in May 2012, and the account was charged off in September 2012.³

Applicant admitted owing the \$292 debt to a home security company that is alleged in SOR ¶ 1.c, but he stated that the company "never actively verified [Applicant's] system was functioning after installation."⁴

Applicant was unemployed from August 2005 to January 2006, December 2006 to March 2007, and April 2009 to July 2009. He indicated that he "mistakenly allowed [his] wife to handle the finances in [their] marriage, thereby being somewhat unaware of the amount of debt in [his] name as well as hers." He admitted that he is in a "tenuous financial situation," but he is "researching and planning the best way out for [him] and [his] children." He stated that he plans to pay his debts, but he will not be able to effectively enter negotiations with any creditors or work with a debt resolution company until after his divorce in September 2014. He is a novelist and his first book has been accepted by a publisher. He expects the book to be published early next year. He stated

¹ Item 5; AE A.

² Items 4, 6, 7.

³ Items 4, 6, 7.

⁴ Items 4, 6, 7.

that he will use proceeds from the book to pay his debts. He and his wife have received some financial counseling.⁵

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 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, administrative judges apply the guidelines 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 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."

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 the 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 EO 10865 provides that adverse 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).

⁵ Items 4, 5; AE A.

Analysis

Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant accumulated delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

The evidence does not establish that Applicant is personally liable for the \$21,990 debt alleged in SOR ¶ 1.a. SOR ¶ 1.a is concluded for Applicant. However, the debt is part of his family's financial responsibilities, and it may be considered in how it affects Applicant's overall financial situation.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 had several periods of unemployment between 2005 and 2009. He divorced his first wife in 2009 and he expects his second marriage to end in divorce in September 2014. He indicated that his wife handled the finances and he was unaware of the extent of his debt. Allowing his wife to handle the finances was a matter within his control, but his unemployment and divorce were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant indicated that he may have a complaint with the home security company for the \$292 debt that is alleged in SOR ¶ 1.c, but he did not submit evidence of any dispute. He did not explain how his unemployment and divorce affected his current finances. He did not submit evidence of payments toward his delinquent debts. He stated that he cannot begin to address his debts until after his divorce in September 2014. He also stated that he plans to use the proceeds from his book when it is published next year to pay his debts. The Appeal Board has held that “intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches.” See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I do not find that he acted responsibly under the circumstances or that he made a good-faith effort to resolve his financial problems. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(d), and 20(e) are not applicable. AG ¶¶ 20(b) and 20(c) are partially applicable. I find that financial concerns remain despite the presence of some mitigation.

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. I have incorporated my comments under Guideline F in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's honorable military service. However, the limited information in the record has not convinced me that his finances are sufficiently in order to warrant a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated the financial considerations security concerns.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge