



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 14-00036 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

06/04/2014

Decision

LYNCH, Noreen A., Administrative Judge:

On February 28, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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; 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 an administrative determination in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated April 16, 2014.¹ Applicant received the FORM on April 23, 2014. He did not submit additional information for the record. I received the case assignment on June 2, 2014. Based on a review of the case file, I find Applicant has not mitigated the security concerns raised. Security clearance is denied.

¹The Government submitted six items in support of its case.

Findings of Fact

In his answer to the SOR, Applicant admitted all allegations under Guideline F, ¶¶ 1.a. through 1.o., with explanations. (Item 3)

Applicant is 39 years old. He is a pipe fitter with a defense contractor. He completed his high school education in May 1994. Applicant is married, and he has one child and one step child. (Item 5) Applicant has been employed with his current employer since July 2013.² On August 27, 2013, he completed a security clearance application. (Item 5)

The SOR alleges 15 delinquent debts totaling approximately \$26,000. These include collection accounts, medical accounts, and student loan accounts. (Item 1) A credit report confirms the debts. (Item 6) His student loans (SOR 1.g and 1.h) are in deferment. (Item 3)

Applicant explained in his Answer, that his financial issues began in approximately 2008 due to “loss of a job.” The record reflects that he has had steady employment since March 2011. He emphasized that he planned to seek credit counseling to resolve the financial issues when he began his current 2013 employment. In addition, he noted that he has retained a law group so that he could file a Chapter 7 bankruptcy petition, with an estimated filing date of May 2014. (Item 3) Applicant did not submit any information concerning a bankruptcy filing. He provided documentation that three payments were made in February 2014 on one account (SOR 1.f). However, no additional documentation was submitted to show the current status of the debt.

Applicant’s record does not include a personal financial statement to show his total monthly net income or total household expenses. There is no information in the record that he has received financial counseling or assistance with financial planning despite his intention to do so. (Item 5)

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.

²Applicant listed sporadic periods of unemployment from September 2010 through March 2011; September 2009 through March 2010; and August 2008 through September 2008.

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 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. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ 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.

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

⁸ *Id.*

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. "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."

Applicant's admissions and credit reports establish his delinquent debts in the amount of \$26,000. 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.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant still has a significant amount of delinquent debt. The delinquent obligations remain. 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.

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) does not apply. Applicant did not provide information to prove that the delinquencies were beyond his control and that he acted responsibly. He had periods of unemployment, but he did not show a nexus between the unemployment and his inability or unwillingness to pay on the delinquent accounts, nor did he show what payments were made following March 2011, when he was again employed. He indicated that he has contacted a law firm to petition for Chapter 7 bankruptcy, but he did not submit any documentation that he has done so. He has not contacted his creditors.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant has failed to provide documentation to show that he has a plan for the remaining delinquent debts. He did not present evidence that he received financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. I find that there are not clear indications that his financial problems are being resolved and are under control. He has not met his burden of proof.

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 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. 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 39 years old. He has worked for his current employer since 2013. Applicant has not held a security clearance. While he made reference to his unemployment, he failed to provide any specific information connecting his financial indebtedness to circumstances beyond his control. Moreover, he did not demonstrate that he has taken responsible steps toward the resolution of his debts. He has not provided sufficient evidence or documentation to warrant mitigation in this case.

Applicant's steady employment, with the exception of short periods of unemployment, creates significant doubts about the eventual resolution of the SOR debts and his overall solvency and financial integrity. Since his Answer to the SOR in March 2014, he has not put a plan in place to address his financial issues, or shown that he has had recent contact with his creditors. He stated his intent to file under Chapter 7 bankruptcy, but provided no evidence that he started the process. His pattern of financial irresponsibility and his failure to take action to resolve his debts do not show good judgment or reliability.

The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. A denial of his security clearance does not necessarily indicate anything adverse about an applicant's character or loyalty. It means that the individual has presented insufficient mitigation to meet the strict standards controlling access to classified information.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a-1.o: | 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