



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



In the matter of:)	
)	
)	ISCR Case No. 14-00069
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

08/25/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On February 27, 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 responded to the SOR on March 13, 2014, and elected to have the case decided on the written record in lieu of a hearing. On May 16, 2014, Applicant changed his request to a hearing before an administrative judge. The case was assigned to me on July 21, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 24, 2014, scheduling the hearing for August 13, 2014.

The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through H, which were admitted without objection. DOHA received the hearing transcript (Tr.) on August 21, 2014.

Findings of Fact

Applicant is a 29-year-old employee of a defense contractor. He has worked for his current employer since December 2007. He is applying for a security clearance. He has an associate's degree, and he is taking additional classes toward a bachelor's degree. He is married with two children.¹

The SOR alleges delinquent debts of \$13,185 (SOR ¶ 1.a) and \$2,578 (SOR ¶ 1.b). Applicant admitted owing the two debts. The debts also appear on Applicant's October 2013 credit report.

Applicant entered into a business venture with two individuals in 2006. He used his credit to pay some of the business expenses. The venture was unsuccessful, and he ended the relationship in 2007. He also had periods of unemployment before he was hired by his current employer in December 2007. He indicated that he "overspent" and "was living well beyond [his] means prior to being laid off in 2006." He was unable to pay all his bills, and several debts became delinquent.²

Applicant paid several debts after he obtained his current job. In about 2008 after a bad experience with a creditor, as discussed below, Applicant decided to concentrate on paying new bills and that he would "leave all [his] old debts alone and in the past." In about 2010, he paid more debts, but he never paid the two debts alleged in the SOR. He spoke to a mortgage loan officer who told him that his credit rating would improve if he did nothing about the debts and let them fall off his credit report after seven years. Applicant decided to follow that advice.³

Applicant accrued the \$13,185 credit card debt alleged in SOR ¶ 1.a through personal purchases such as musical equipment and traveling. He also used the credit card for his business. His October 2013 credit report shows the account was opened in June 2006, and it lists a date of last action of March 2008. The debt is not listed on credit reports from April 2014 and August 2014. Applicant stated that he attempted to settle the debt, but the collection company handling the debt wanted a large lump-sum payment. Applicant initially indicated that he did not intend to pay the debt. At his hearing, he indicated he was "50-50" on whether he would pay the debt.⁴

¹ Tr. at 38, 40, 46; GE 1; AE F.

² Tr. at 19-25; Applicant's response to SOR; GE 1, 2.

³ Tr. at 19, 32-36, 42; Applicant's response to SOR; GE 2; AE H.

⁴ Tr. at 32, 41-45; Applicant's response to SOR; GE 2-4.

The \$2,578 debt alleged in SOR ¶ 1.b was for the lease of a credit card machine for the failed business venture. Applicant stated one of the individuals applied for the lease of the machine, but he had a poor credit rating, so Applicant submitted a back-up application. Applicant stated that he was told that the individual's application was accepted. The individuals kept the credit card machine after Applicant left the business. Applicant received notices from the credit card machine company after he was no longer with the business. He contacted the company and told them that he was not liable for the machine, but the company threatened to sue him. He made several payments to the company but stopped after the company made an unauthorized withdrawal from his account. He does not intend to pay the debt. The debt is listed on the October 2013 credit report with a date of last action of September 2007. It is not listed on the credit reports from April 2014 and August 2014.⁵

Applicant's current credit reports do not list any derogatory information. He has minimal savings, but he is able to pay his current bills without incurring any additional delinquent debts. He is current on the \$527 monthly payments on the \$27,245 car loan that was incurred in August 2013. He has not received financial counseling.⁶

Applicant submitted letters praising his job performance, trustworthiness, honesty, work ethic, responsibility, patriotism, and integrity.⁷

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."

⁵ Tr. at 19-38, 43; Applicant's response to SOR; GE 1-4.

⁶ Tr. at 33, 37-40, 44-45; Applicant's response to SOR; GE 1-4; AE A-C, G.

⁷ AE D, E.

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).

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. Two 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 he was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant accrued several debts when he was unemployed and when he was involved in a failed business venture. Those events may have been beyond his control, but Applicant also admitted that he "overspent" and "was living well beyond [his] means prior to being laid off in 2006."

Applicant has a grievance with the credit card machine company. I am giving Applicant the benefit of the doubt in that regard and SOR ¶ 1.b is concluded for Applicant.

The \$13,185 credit card debt alleged in SOR ¶ 1.a is more problematic. Applicant used the credit card for business and personal expenses. He has worked for his current employer since December 2007. He paid several debts then he decided to "leave all [his] old debts alone and in the past." He may have had a bad experience with the credit card machine company, but that does not justify ignoring a legitimate debt while he had the means to address it. Applicant's plan to raise his credit score by waiting until the debts fell off his credit report was successful. However, that does not equate to responsible conduct.

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b) and 20(c) are partially applicable. AG ¶¶ 20(a) and 20(d) are not 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 my 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 favorable character evidence and his work history. Applicant completed his goal of raising his credit score by waiting for debts to fall off his credit report. That does not justify his decision to disregard a valid debt while he had the financial means to resolve it. His conduct raises doubts about his judgment, reliability, and trustworthiness.

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:	Against Applicant
Subparagraph 1.b:	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.

Edward W. Loughran
Administrative Judge