



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



In the matter of:)
)
-----) ISCR Case No. 14-00102
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i Garcia, Esq., Department Counsel
For Applicant: *Pro se*

10/23/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to mitigate security concerns related to Guideline F. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On March 17, 2014, 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 (AG) effective within the DOD on September 1, 2006.

In an April 30, 2014, response, Applicant admitted both allegations raised in the SOR with comments attached. He also requested a decision without hearing. Counsel for DOD prepared a Form of Relevant Material (FORM) containing 12 attachments to support the Government's position in this matter. Applicant did not submit a response or any additional information within the specified time period following his receipt of the FORM. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on October 9, 2014. I have thoroughly reviewed the FORM and other case file

materials. Based on the materials submitted, I find that Applicant failed to meet his burden in mitigating financial considerations security concerns. Clearance is denied.

Findings of Fact

Applicant is a 51-year-old vehicle test operations technician who has worked for the same defense contractor since October 1996. He has earned a high school diploma and an associate's degree. He served on active duty in the U.S. Air Force for four years before being honorably discharged. Applicant is divorced and has three adult children.

The March 2014 SOR alleges two delinquent debts, for a collection account in the amount of \$13,499 and a 180-days past-due balance of \$38,033, respectively, as allegations 1.a-1.b. Applicant admitted both allegations. He wrote that the debt at 1.a had been reduced to \$12,499. He also wrote that he did not believe the balance shown at 1.b was correct. He argued that he had submitted to the creditor evidence that the balance shown was satisfied by a default insurance policy, but provided no such corroborating evidence with his response to the SOR.

Up until 2007, Applicant and his wife lived comfortably in a house he bought with \$8,300 down and a loan for \$261,700. His mortgage payment fluctuated between \$1,700 and \$2,000 a month. Between 2007 and 2008, Applicant found it difficult to meet expenses when his wife was unable or refused to work. (Response to the SOR; FORM, Item 6, at 4) This impacted his timely home mortgage payment. In 2008, he discovered she was involved in illegal drug use. At the same time, items began disappearing from the home and his wife would leave home for a day or two unexpectedly. Soon, she was openly using drugs with her friends in their garage. Her drug abuse made her returning to the workplace out of the question. In October 2008, his \$12,439 minivan was repossessed. When interviewed in 2013, Applicant stated that he believed the debt related to this vehicle was absolved because it was sold, denied knowledge of a debt related to this automobile, and orally disputed the debt. FORM, Item 7, at 3.

Meanwhile, Applicant fell behind on the mortgage for three or four months. In October 2008, he tried to refinance his mortgage. The lender complied, but in such a way that the monthly payment increased. By February 2009, Applicant was in no better shape financially. He consulted another lender, which advised him to default on his loan while it found him a refinanced mortgage deal. No deal could be struck. Meanwhile, Applicant's wife stole his checkbook and wrote \$3,000 in checks, leaving Applicant without money. By April or May 2009, Applicant received the foreclosure notice on the property and quit making payments on the loan. Foreclosure was commenced in September 2009, and Applicant was given until January 31, 2010 to vacate the home. On May 12, 2011, Applicant told investigators that the residence was ultimately sold for \$270,000, and the lender was satisfied with payment of default insurance. However, he provided no evidence to them of that assertion. His monthly gross income is approximately \$6,417 and his total monthly expenses are about \$4,065. His monthly discretionary funds amount to \$217.

Applicant and his family moved into their new home in May 2010, after a protracted stay in a hotel. The couple separated in July 2010. Applicant's wife ultimately quit using drugs. Today, Applicant makes monthly payments on his new home and \$270 monthly spousal-support payments.

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 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 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." 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 not drawn 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, 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 and 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.

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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has two delinquent debts. Such facts are sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate the finance-related security concerns in this case:

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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

There is no documentary evidence showing that any progress has been initiated or made by Applicant with regard to these accounts. With regard to their creation, spousal or domestic discontent that has adverse financial repercussions may not be unique, but it can be unforeseeable despite an applicant's best behavior. At the time of his wife's drug abuse, there is no indication Applicant himself, acted irresponsibly, nor is this scenario likely to recur. Given these considerations, AG ¶ 20(a) and AG ¶ 20(b) apply with regard to the creation of the debt at issue.

There is, however, no substantiating documentary evidence showing Applicant has addressed or otherwise made progress on the debts created. There is no documentary evidence showing that he received financial counseling, that the past-due accounts have been addressed, a good-faith effort has been put in place to address those debts, or reflect a legitimate dispute. Therefore, none of the remaining mitigating conditions apply.

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). 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 limited facts and circumstances noted in this case. I incorporate my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, others may have warranted additional comment.

Applicant a 51-year-old vehicle test operations technician who has worked for the same employer for 18 years. He has earned an associate's degree and served honorably in the U.S. military. He helped raise three children. His marriage began to falter and he started to face financial difficulties when his former wife refused to work. Instead, she devoted her time to drugs and selfishly irresponsible behavior. Reduced to one income and with her abuse of the family coffers, Applicant became delinquent on his home loan and a vehicle loan.

In his defense, Applicant provides a plausible explanation with regard to the home loan: that default insurance satisfied whatever debt was owed after the home was foreclosed upon. In relying on an administrative determination based on the written record, however, Applicant neglected to introduce documentary evidence substantiating his assertion. Similarly, documentary evidence is lacking with regard to the other debt at issue. Lacking such evidence, I cannot find that financial considerations security concerns have been mitigated. Therefore, clearance is denied.

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-1.b:	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. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge