



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



In the matter of:)	
)	
)	ISCR Case No. 14-00104
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr. Esq., Department Counsel
For Applicant: *Pro se*

06/16/2014

Decision

LYNCH, Noreen A., Administrative Judge:

On March 4, 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 22, 2014.¹ Applicant received the FORM on April 29, 2014. He submitted additional information for the record, which was marked as AX A-B. I received the case assignment on June 9, 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 five 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.d., with explanations. (Item 2)

Applicant is 37 years old. He is a software system safety engineer with a defense contractor. He obtained a bachelor's degree in May 2000. Applicant is married, and he has three children. (Item 5) Applicant has been employed with his current employer since February 2003. On August 19, 2013, he completed a security clearance application. (Item 4)

The SOR alleges four delinquent debts totaling approximately \$20,118. These include collection accounts, and a past-due account. (Item 1) A credit report confirms the debts. (Item 5)

Applicant explained in his Answer, that his financial issues began in approximately July 2011 due to "an increase in basic cost of living." The record reflects that he has had steady employment since February 2003, but he is the sole provider for his family. Applicant acknowledged that he was receiving calls from various collection agencies, and his intent was to fully pay his debts but he stated that he is basically living "paycheck to paycheck." He has reduced his living expenses (cable, life insurance) to help pay his delinquent debts. Finally, Applicant stated that his financial strain continues due to car repairs, pre-school tuition for his son, medical expenses, and payments on the largest of his delinquent debts. He plans to home school his children. The record reflects that Applicant has made sporadic payments on all accounts. He noted that he wanted to pay the largest account first (SOR 1.a). His credit report listed several accounts that are "paid as agreed."

The debt alleged in SOR ¶ 1.a in the amount of \$10,421 has been a collection account since 2012. Applicant was not successful in his attempts to modify the payment amount. He made a payment of \$470 in January 2012, but was not able to make another payment (\$100) until May 2012. At that point, another collection agency bought the account. In June 2012, the account was again sold and Applicant negotiated payments of \$200 a month beginning in June 2012. Applicant continued some payments until May 10, 2013. In August 2013, Applicant received a call from a third collection group. Applicant stated that the company did not confirm the validity of the debt, but offered Applicant an opportunity to resume payments. Applicant recalls that he contacted them with his checking account information, but they did not return his call. Applicant states he did not receive further information from them. He stopped making payments. However, in 2013, a lawsuit was filed against Applicant for the balance of the account. He secured legal service and on March 14, 2014, a settlement offer was made. Applicant was given three months to pay the debt.(Exhibit in File; Attachment to Answer) Applicant made a \$3,000 payment on April 21, 2014. He made a \$500 payment on May 14, 2014. (AX A)

The debt alleged in SOR ¶ 1.b is a collection account for \$7,484. The 2013 credit report shows no activity on the account since 2011. Applicant contacted the collection company in March 2014 and arranged a payment plan of \$50 a month. He made the first \$50 payment in March 2014, automatically debited from his checking account. Applicant provided his bank statement to confirm a \$50 payment in April, 2014. (AX A) In September 2014, Applicant and the collection company will renegotiate a settlement amount.

Applicant has arranged a repayment agreement with the creditor of the debt alleged in SOR ¶ 1.c for \$2,213. Applicant's first payment of \$100 was made in February 2014. The plan schedule is for one year. Applicant presented documentation that he made another payment of \$231.91 in February 2014. Applicant submitted his bank account statement that confirms the \$129.08 monthly amount is automatically deducted from his account. (Exhibit in File)

The debt alleged in SOR 1.d for a past-due account for \$51 is paid. Applicant presented a letter confirming that as of March 2014 the account has been closed and the balance is zero. In fact, the \$51 was the result of a \$.12 shortage from the last payment that created late fees of \$51.12. The bank waived the late fees. Applicant has satisfied the debt. (Exhibit in File)

Applicant submitted a personal financial statement listing a total monthly net income of \$6,635. After total household expenses and debt repayment, he has a net monthly remainder of \$373. (AX B) He has a savings allotment of \$664 which he uses for debt repayment. He saves about 10% of his net monthly income each month. Applicant stated that he read a book concerning a way to get out of debt. (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.

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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ 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.

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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

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 \$20,000. 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.” An unpaid debt is a continuous course of conduct for the purposes of DOHA adjudications. *See, eg*, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012) 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) partially applies. Applicant did not provide information to prove that the delinquencies were beyond his control and that he acted responsibly until recently. He did not show a nexus between the events he described and his inability or unwillingness to pay on the delinquent accounts. In response to the FORM, Applicant presented new information concerning his payment plans and amounts that he has paid. He has paid one account and the others are in repayment status.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant stopped his sporadic payments in 2013 on his largest delinquent debt. Due to lack of adequate progress on the debt, he was sued in 2013. He obtained legal counsel and resumed in 2014 (Stipulation of Judgment). He did not pay any of the other delinquent debts during that time. He produced documentation to show that now 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. He has only recently made efforts to address his delinquent debts. 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 37 years old. He has worked for his current employer since 2003. While he made reference to his increase in basic costs of living, his son's education, and major car repairs, 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 until very recently. Approximately two years after Applicant was aware of his debts, he began to address them in earnest. He has now taken steps to resolve his delinquent debts.

Applicant's steady employment since 2003 and his lack of payments to creditors for almost two years, 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 put a plan in place to address his financial issues. He stated his intent to pay all his debts. His long term pattern of financial irresponsibility and his failure to take action to resolve his debts for two years do not show good judgment or reliability. This conclusion, however, does not preclude Applicant from demonstrating the requisite financial rehabilitation and reform in the future.

Because Applicant chose to have this matter handled administratively, I am unable to evaluate his demeanor, appearance or credibility. In relying on the written record, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns.

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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge