



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



In the matter of:)	
)	
)	ISCR Case: 14-02765
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

06/12/2015

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated over \$88,000 of delinquent debt owed to three creditors for judgments entered between 2009 and 2010. He failed to provide evidence that he paid or resolved any of the three judgments. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On February 20, 2013, Applicant submitted a security clearance application (SF-86) for an investigation. On August 1, 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DoD after September 1, 2006.

On August 18, 2014, Applicant answered the SOR (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On February 27, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was provided to Applicant on March 19, 2015, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on March 25, 2015, and returned the receipt to the Defense Office of Hearings and Appeals (DOHA). He provided additional information in response to the FORM within the 30-day period. Department Counsel had no objection to said submission, which I subsequently marked as Applicant Exhibit (AE A), and admitted into the record. DOHA assigned the case to me on May 22, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted responsibility for all three debts alleged in the SOR. (Item 1.) His admissions are incorporated into these findings.

Applicant is 25 years old. He is unmarried, but engaged. He attended college from November 2008 to December 2010, and earned an associate's degree. He was unemployed while attending college and briefly after graduation. He began working in February 2011. He was employed fulltime from November 2005 to November 2008. (Item 2.)

Based on credit bureau reports (CBR), dated March 2013, July 2014, and February 2015, the SOR alleged three delinquent judgments totaling \$88,094. One judgment for \$13,865 was entered in 2010 and related to an unpaid credit card. Two judgments were entered in 2009, one for \$73,505 and another for \$724. The \$73,505 judgment related to a restaurant lease Applicant co-signed with his sister. The debt arose after the restaurant closed. The creditor for the \$724 judgment was an apartment complex where Applicant had rented a unit. Applicant disclosed these delinquent debts in his February 2013 SF-86. (Items 2 through 6.) None are resolved.

Applicant said the judgements accumulated during the three years he was unemployed as a result of an injury. He also attributed the financial problems to a move home during that time, to take care of his sick mother and help his sister with her restaurant business while she was serving in the Merchant Marine. He said he had worked out a repayment plan for the \$13,865 judgment but was unable to maintain the payments after he became unemployed. Recently, he has been unsuccessful in negotiating with the credit card and lease creditors, and unable to locate the apartment complex creditor. (Item 1; Answer; AE A.)

There is no evidence that Applicant obtained credit counseling or sought assistance with a debt consolidation company within the past couple years. He did not provide a budget or a solid plan to address the delinquent debts. He submitted no evidence concerning the quality of his professional performance, or the level of responsibility his duties entail. He provided no character references describing his judgment, trustworthiness, integrity, or reliability.

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 (AG) 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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 avoided drawing 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 protect or

safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant's unpaid judgments accumulated between 2009 and 2010. He has been unable or unwilling to satisfy or resolve them. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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's delinquent debts, which arose in 2009 and 2010, remain unresolved. Because he failed to address any debt, he did not demonstrate that such problems are unlikely to continue or recur. His reliability and trustworthiness in managing delinquent debts remain a concern. The evidence does not support the application of AG ¶ 20(a).

Applicant provided some evidence that his financial problems arose as a result of circumstances beyond his control, specifically an injury. However, his other reasons for failing to address his obligations, such as a decision to attend school fulltime, were within his control. He did not present any evidence that he attempted to resolve the debts while they were accumulating. AG ¶ 20(b) has minimal application.

Applicant has not participated in financial or credit counseling. He has not shown clear indications that the delinquent debts are under control. Thus, AG ¶ 20(c) has no application. He did not provide sufficient documentation to demonstrate that he has made a good-faith effort to resolve any of the three SOR-listed debts. Hence, AG ¶ 20(d) does not apply. Applicant admitted owing the three debts, hence, there is no reasonable basis to dispute any delinquent debt. AG ¶ 20(e) is not applicable.

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.

