



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



In the matter of:)	
)	
)	ISCR Case No. 14-02806
)	
)	
Applicant for Security Clearance)	

Appearances

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

06/17/2015

Decision

WHITE, David M., Administrative Judge:

Applicant incurred substantial delinquent indebtedness but, despite regular full-time employment, demonstrated neither means nor efforts to resolve the large majority of it. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on January 27, 2014. On November 3, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on December 6, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 3, 2015. The case was assigned to me on February 19, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on February 25, 2015, and I convened the hearing, as scheduled, on March 17, 2015. The Government offered Exhibits (GE) 1, 3, 4, and 5, which were admitted without objection. Applicant objected to the admission of GE 2, which is an unsworn summary of an interview prepared as part of a report (ROI) by an investigator from the Office of Personnel Management. No authenticating witness was presented by Department Counsel. Per Directive ¶ E3.1.20, GE 2 was not admitted into evidence or considered in this decision. Applicant testified on his own behalf; presented witness testimony from his supervisor; and offered exhibits (AE) A through C, which were admitted without objection. I granted Applicant's request to leave the record open until April 8, 2015, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on March 25, 2015. Applicant timely submitted additional evidence after the hearing, which was marked and admitted as AE D through G, and the record closed as scheduled.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor, where he has worked since November 2007. Immediately preceding that employment, he worked in a full-time state law enforcement position for seven years. He also held part-time employment in several other jobs during the past three years. He is married, with two children ages 19 and 16. He is a high school graduate, and earned two associate's degrees from the Community College of the Air Force. He was on active duty in the Air Force from 1987 to 1992, then served in the Air Force Active Reserve until December 2012. He retired at the rank of senior master sergeant (E-8), with an Honorable discharge, and held a security clearance throughout his military service. (GE 1; Tr. 7-9, 57-59.)

In his response to the SOR, Applicant admitted the allegations concerning delinquent debts set forth in SOR ¶¶ 1.a through 1.d, and 1.i. He denied the other five SOR allegations of delinquent debts; claiming that one had been paid, and that others were duplicate listings of admitted debts as described below. (AR.) Applicant's admissions are incorporated in the following findings.

In his testimony, Applicant confirmed his admissions that he owes the delinquent debts alleged in SOR ¶ 1.a through 1.d and 1.i. These include two home equity loans that he took out in June 2006 and January 2007 for home remodeling, that were charged off by the lender and placed with a collection agency in mid-2010. The former (\$24,741 in SOR ¶ 1.b) was originally for \$30,000 and the latter (\$60,335 in SOR ¶ 1.a) was originally for \$70,000. Applicant also has a purchase money first mortgage loan on his home (originally for \$122,400 in 1996 with a recent balance of \$88,533 on which he was about four months delinquent at the time of his hearing), and another \$100,000 home equity loan that he opened in June 2006, on which he is still making payments with a \$63,524 balance. (AR; GE 1; GE 4; GE 5; Tr. 66-69, 79-80, 83-87.)

The \$4,354 debt described in SOR ¶ 1.c involves a credit card account that Applicant opened in 2006 at the same credit union that extended him his home equity loans. He stopped making payments toward this debt in mid-2010, and it was also charged off and placed for collection. (AR; GE 1; GE 4; GE 5; Tr. 69-70.) The \$1,074 debt alleged in SOR ¶ 1.d arose in 2009 when his daughter received medical treatment for a sports injury that was not fully covered by the medical insurance his wife carried for the children. Applicant had declined to participate in his employer's medical insurance in order to increase his take-home pay. Applicant demonstrated no effort to resolve either of these debts. (AR; GE 1; GE4; GE 5; Tr. 70-71, 87-90.)

The \$6,768 delinquent debt alleged in SOR ¶ 1.i¹ is another credit card account that Applicant opened in April 2006 with an \$8,000 credit limit. It was charged off and placed for collection after Applicant stopped making payments in June 2011. (AR; GE 1; GE 4; GE 5; Tr. 76-77.) Applicant formally denied the debts alleged in SOR ¶¶ 1.f and 1.j in his answer to the SOR, but said that he did so because they represent two different credit report listings concerning the same debt that he admitted is valid. The debt arose from his credit union's overdraft protection program, and record credit reports show that the credit union charged off the debt in the amount of \$425 (SOR ¶ 1.f) during 2010, and reported it as a collection account with a \$533 balance (SOR ¶ 1.j) in 2011. During his testimony Applicant admitted that he owes the debt, but has made no effort to resolve it. (AR; GE 1; GE 4; GE 5; Tr. 71-73.)

Applicant repaid the \$161 medical debt alleged in SOR ¶ 1.e that had been placed for collection in August 2011, as documented by a letter from the collection agency dated February 27, 2014. (AR; AE A; GE 1; Tr. 32-33, 71.) Applicant's testimony and record credit reports established that the debts alleged in SOR ¶¶ 1.g and 1.h are duplicate listings, reflecting reports to credit bureaus by the original creditor, of the debts alleged to be owed to the collection agency in SOR ¶¶ 1.b and 1.c. (AR; GE 4; GE 5; Tr. 73-74.)

Applicant testified that he and his wife make a combined annual income of between \$70,000 and \$80,000. He did not provide detailed budget or financial statement, despite being offered the opportunity to do so. He has not undergone any financial counseling, has no savings, and said that his income is insufficient to pay all current family living expenses despite their frugal lifestyle. His wife was injured in a late 2002 automobile accident and off work for several months in 2003 while recovering. They had also encountered financial delinquencies preceding that incident, however, and Applicant did not demonstrate that it had any current effect on his financial situation. He and his wife used funds from his GI Bill eligibility for her to take classes allowing her to change from her school district employment to a medical assistant position where she currently worked. Again, Applicant did not demonstrate that this period of schooling, while receiving Government benefits, adversely affected their budget. (Tr. 60-64, 79-82, 90-100.)

¹The original SOR contained two subparagraphs designated, "1.j"; but none designated, "1.i". The first one was corrected, on the record, to read, "1.i." (Tr. 18-19.)

Applicant's supervisor testified concerning the high quality of his professional performance. Applicant's duties entail no exposure to or handling of classified or sensitive information. His only need for a security clearance is to permit him access to the base computer network for email communication purposes. Applicant also submitted a 2013 memorandum from a senior commander expressing appreciation for his efforts to enhance soldier safety by avoiding impaired vehicle operations, and an article from his employer's newsletter commending his performance and contributions. (Tr. 40-49; AE B; AE C.)

After his hearing, Applicant submitted documentation showing that he and his wife had just entered into a Chapter 13 bankruptcy fee agreement with an attorney, and completed the mandatory credit counseling course without preparing a debt repayment plan. No proof of fee payment or other progress with this bankruptcy was provided. (AE D.) Applicant also provided documentation concerning the high quality of his military service (AE E), his outstanding performance in his current position (AE F), and some noteworthy accomplishments while he worked in state law enforcement (AE G).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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 under 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.

The record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant repaid one SOR-listed delinquent medical debt totaling \$161. However, he accrued more than \$97,800 in other delinquent debts over the past five years, and demonstrated neither the means nor any effort to resolve them. These substantial debts raise security concerns under DCs 19(a) and (c), 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 SOR-listed delinquent debts are recent and ongoing, without indication that the circumstances under which they arose have changed. His history of financial irresponsibility goes back more than 12 years, with no demonstrated period of meeting his voluntarily undertaken debt obligations despite regular employment in positions of his choosing. He therefore failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). He voluntarily incurred all of the debt in question, and has been fully employed during the period the payments became delinquent. This is not responsible action under the circumstances.

Applicant provided evidence of recent bankruptcy credit counseling, but has not demonstrated substantial progress toward debt resolution or changes to bring his financial situation under control. He repaid one small medical debt, and recently entered into a fee agreement with a bankruptcy attorney under which no payments were documented. This is a positive start, but does not yet establish mitigation of his substantial remaining delinquent debts under MC 20(c) or (d). Other than the duplicate listings of otherwise valid debts in SOR ¶¶ 1.f, 1.g, and 1.h, MC 20(e) is not implicated.

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 pertinent facts and circumstances surrounding this case. Applicant has incurred substantial delinquent indebtedness that he has made very little effort to repay. These debts remain outstanding, creating the ongoing potential for pressure and duress. If anything, the evidence showed that his financial situation continues to deteriorate. It does not support a finding that continuation or recurrence are unlikely, or that behavioral changes demonstrate rehabilitation. He is a mature and experienced individual who is accountable for his choices and financial irresponsibility. Overall, the record evidence creates ongoing doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through d:	Against Applicant
Subparagraphs 1.e through 1.h:	For Applicant
Subparagraphs 1.i and 1.j:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge