



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-02817

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel
For Applicant: *Pro se*

01/12/2016

Decision

HOWE, Philip S., Administrative Judge:

On December 20, 2012, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). On October 14, 2014, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on November 5, 2014. Applicant requested his case be decided on the written record in lieu of a hearing.

On July 1, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1-6, was provided to the Applicant on August 21, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on August 31, 2015.

Department Counsel submitted six Items in support of the SOR allegations. Item 4 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management in March 2013. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

Applicant filed a Response to the FORM within the 30-day time allowed that would have expired on September 30, 2015. Department Counsel had no objection to the admission of the documents into the record.

I received the case assignment on October 15, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted all the allegations in the SOR. He also had a letter to the adjudicator explaining how he got into his financial predicament. In his Response he submitted documents pertaining to three delinquent debts with his cover letter (Items 2-6).

Applicant is 59 years old, never married, and does not have any children. Applicant earned an Associate's degree in 1975 and a Bachelor's degree in 1996. His e-QIP shows employment from 2000 to 2006 for a company. Then from February 2006 to February 2010 he operated a food store. Then from March 2010 to December 2011 he worked for a temporary employment agency. He was unemployed from January 2012 to March 2012. Since then he has worked full-time for another company, a defense contractor, as a technician. (Item 3)

Applicant has \$149,346 in delinquent debt. His debt arose from his operation of the food store from 2006 to 2010. In 2006, he purchased a grocery store with three apartments above it. His Answer sets forth the problems he had with tenants in the apartments and the financial costs to maintain the apartments. As a result, he did not

have the cash flow to restock the store, and his mortgage payments were insufficient. He cashed out his Section 401(k) retirement savings account to pay his creditors, but it was not enough to save the store. Finally, he stated, the property was foreclosed. The debt includes taxes owed to the Internal Revenue Service (IRS) from the withdrawal of retirement funds he used attempting to save his store. Applicant admits in his September 22, 2015 Response that he has not received any credit counseling. His Response also included documents pertaining to three debts listed in Subparagraphs 1.a (IRS for \$27,279), 1.c (Bank of America for \$8,294), and 1.e (First National Bank for \$5,703) that he claims he is paying periodically to resolve. None of them have been completely satisfied. (Items 1-3, 5, 6; Response; Answer)

The IRS debt for \$27,279 is the amount of a lien filed against Applicant in November 2008 (Subparagraph 1.a). Applicant does not explain directly the source of this tax liability for which the IRS filed a lien in 2008, but does refer to withdrawing funds from his Section 401k retirement savings to help save his store. Applicant operated the grocery store from 2006 to 2010. In March 2015 he sought to make an arrangement with the IRS to pay the debt by installment payments. He provided documentation that shows from July 2015 through September 2015, he made monthly payments of \$600 to the IRS to repay this tax debt. He intends to continue to resolve this debt through his monthly payments of this amount. This debt is being resolved by an installment payment agreement. (Items 1-3, 56; Response)

The debt to the electric utility for \$223 is for power used in the three apartments attached to the grocery store he formerly operated (Subparagraph 1.b). The debt was reported to the credit agencies in 2010. Applicant has not paid this debt and it remains unresolved. (Items 1-3, 5, 6; Response)

The \$8,294 Bank of America debt was incurred when Applicant bought products for the store and paid bills relating to the grocery store (Subparagraph 1.c). Applicant's Response and attachments claim this debt is settled for \$3,068.86. He attached a letter from the collector stating that this amount was to be processed in April 2015 and refers to an agreement that Applicant did not enclose with his Response. There are also two other debts in the amounts of \$12,400 and \$2,250 owed to the same bank creditor listed in the 2013 and 2014 credit reports. The status of these debts is unknown as they relate to Applicant's claim that the debt was settled in 2015. However, it appears this SOR debt is resolved as of April 2015 based on the document Applicant submitted. (Items 1-3, 5, 6; Response)

The debt owed to a bank in the amount of \$2,250 is not resolved (Subparagraph 1.d). Applicant did not produce any documents to show any action on this debt. (Items 1-3, 5, 6)

Subparagraph 1.e alleges a debt owed to another bank in the amount of \$5,703 (.). Applicant submitted a document showing a payment of \$1,900 was made in May 2014 to a collector for the bank. The letter states it was a payment “towards your account(s) listed . . . “without further definition. Applicant paid some money on this account but it is not resolved without a definitive statement from the collector about any balances owed on the account. (Items 1-3, 5, 6; Response)

Applicant owes \$13,007 on a credit card account (Subparagraph 1.f). This account dates from 2010. Applicant claims in his Answer the money was used to keep his store operating. It is unresolved. (Items 1-3, 5, 6; Answer)

Applicant owes another bank on two accounts, \$1,273 on the first account and \$1,037 on the other account (Subparagraphs 1.g and 1.h). Applicant stated in his Answer that this money was used to keep his store operating. Neither account is paid or resolved. (Items 1-3, 5, 6; Response; Answer)

Applicant owes a collection agency on behalf of a bank debt of \$3,984 that is unpaid (Subparagraph 1.i). This debt dates from 2013. The money was used to operate his store. (Items 1-3, 5, 6; Response; Answer)

Applicant owes a bank \$86,346 (Subparagraph 1.j). This debt is not resolved. Applicant denies in his Answer knowing what this debt represents. (Items 1-3, 5, 6; Response; Answer)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 and mitigating conditions, which are useful 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, the administrative judge applies the guidelines 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(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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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. 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 relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

From 2010 to the present, Applicant accumulated 10 delinquent debts, totaling \$149,346. Eight debts remain unpaid or unresolved. Both of these disqualifying conditions apply.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two mitigating conditions might have partial applicability.

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(b) would apply if the business downturn were shown by Applicant to have a substantial effect on his ability to repay his debts. None of the information he submitted referred to a business downturn. Rather, his explanation was that he spent too much money on refurbishing the three apartments in his store building after the non-paying tenants were evicted. He borrowed heavily to purchase supplies for his store and finally lost it in 2010 when it was foreclosed by the bank. He had to act responsibly under the circumstances for this mitigating condition to apply. He did not supply any information that he did so, only that he kept spending borrowed money to keep his store operating. AG ¶ 20(b) is not established.

Applicant's Response included documents pertaining to his IRS debt and two other debts. There is evidence he has an installment payment agreement with the IRS and paid a settlement amount on another debt. Therefore, Subparagraphs 1.a and 1.c are resolved or in the process of being resolved. The third debt may have had a partial payment made. The good-faith effort pertains only to the two debts being resolved. It does not apply to any of the other debts.

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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken much action to resolve his delinquent debts. He has only resolved in some way two of his ten debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, and duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to resolve eight of his ten delinquent debts during the past five years.

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations.

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 and 1.c:	For Applicant
Subparagraphs 1b, 1.d to 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.

PHILIP S. HOWE
Administrative Judge