



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-02928
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

04/27/2015

Decision

HOGAN, Erin C., Administrative Judge:

On July 24, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing the 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 Department of Defense for SORs issued after September 1, 2006.

Applicant received the SOR on August 5, 2014. Applicant timely answered the SOR and requested that his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on January 9, 2015. The FORM was forwarded to Applicant on January 13, 2015. Applicant received the FORM on January 21, 2015. He had 30 days to submit a response to the FORM. On February 9, 2015, he requested an additional month to submit his response to the FORM. Department Counsel granted this extension. Applicant did not submit a response to the FORM. On April 8, 2015, the FORM was forwarded to the hearing office and was assigned to me on April 10, 2015.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Rulings on Evidence

Item 7 of the FORM is a portion of the Report of Investigation (ROI) from the background investigation of Applicant. The five-page document is a summary of an interview of Applicant which occurred on January 22, 2014, in conjunction with his background investigation. DoDD 5220.6, enclosure 3, ¶ E3.1.20 states, “An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence.” (see ISCR Case No. 11-13999 (App. Bd., February 3, 2014)). In the FORM, the Government failed to mention the requirement in the Directive at enclosure 3, ¶ E3.1.20. Applicant did not make a knowing waiver of the rule. Waiver means “the voluntary relinquishment or abandonment – express or implied – of a legal right or advantage, the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it. *Black’s Law Dictionary*, 1717 (Bryan A. Garner ed., 9th ed., West 2009). Applicant was not expressly informed of the requirement in ¶ E3.1.20. I cannot conclude he expressly waived this rule. He did not respond to the FORM. Item 7 is not authenticated and is not admissible. It will not be considered in this Decision.

Findings of Fact

In his answer to the SOR, Applicant admits to SOR allegations 1.a – 1-.d, 1.f, and 1.h. He denies SOR allegations 1.e and 1.g. (Item 4)

Applicant is a 49-year-old male employed by a Department of Defense contractor seeking to obtain a security clearance. Applicant has been employed with the company since November 2013. He has a high school diploma. He experienced several periods of unemployment, from May 2005 to August 2005, and from March 2013 to November 2013. He married in July 1988 and divorced in June 2002. He has two children, a 20-year-old daughter, and a 23-year-old son. (Item 5)

Applicant completed an electronic questionnaires for investigations processing (e-QIP) on December 13, 2013. (Item 5) A subsequent background investigation revealed that Applicant had eight delinquent debts, a total approximate balance of \$21,857. In addition, Applicant did not file federal and state income tax returns in 2010, 2011, and 2012 because of a lack of income. (Item 5 at 31)

In response to the SOR, Applicant indicates he experienced financial hardship caused by several months of unemployment. He is committed to making payment arrangements with his creditors as soon as his financial situation improves. He is working as much overtime as possible to save for a vehicle and permanent housing. He said keeping his current job is his top priority, because it is how he intends to pay his debts and improve his financial situation. (Item 4)

Status of the Delinquent Debts:

SOR ¶ 1.a: \$1,116 judgment filed against Applicant for a delinquent credit card account. (SOR ¶ 1.a: Item 4 at 1; Item 6 at 4) Applicant states he has been making regular payments of \$50 a month. He states the balance is now \$358. He provided the point of contact to call to verify the status of this account. He did not provide any additional documents, such as receipts or cancelled checks verifying these payments. He claims the debt became delinquent because he was unemployed. Applicant did not provide sufficient documentation to verify that he was making the \$50 payments. (Item 4 at 1)

SOR ¶ 1.b: \$6,893 federal tax lien entered against Applicant in 2008 (Item 4 at 1; Item 6 at 4). Applicant has not made any payments towards his back taxes in years because of financial hardship. He does not mention specifically which years he has failed to file. He claims he cannot afford to file his late tax returns because of financial hardship. (Item 4 at 1-2)

SOR ¶ 1.c: \$8,395 defaulted automobile loan that was placed for collection. (Item 4 at 1; Item 6 at 4) Applicant could not afford to make the payments on his automobile loan because of living expenses and child support. The car was repossessed in mid-2005 shortly before his divorce was final. (Item 4 at 1) (Note: Applicant indicated on his e-QIP application that the divorce was final in June 2002. However, he likely had child support obligations in 2005.)

SOR ¶ 1.d: \$7,344 automobile loan that was 60 days past due in the amount of \$368 (Item 4 at 1; Item 6 at 5). This loan was for a 2008 economy car. Applicant was trying to keep up with the car payments during the time he was unemployed and receiving unemployment benefits. When the extension for federal unemployment benefits failed to pass, he surrendered the car. He intends to enter into a payment arrangement as soon as he is able to afford it. (Item 4 at 1)

SOR ¶ 1.e: \$2,523 account that was placed for collection (Item 4 at 1; Item 6 at 5). Applicant denies this debt because he does not recognize it. He believes it may be the collection agency attempting to collect the debt alleged in SOR ¶ 1.f. He indicated that he will contact the company to resolve the matter. He did not provide an update as to what steps he has taken to resolve the matter.

SOR ¶ 1.f: \$2,180 charged-off credit card account (Item 4 at 1; Item 6 at 5). Applicant admits that he owes this debt. He used this credit card for a down payment on a motorcycle. The motorcycle turned out to be a lemon. Applicant claims he was not refunded the full amount of the motorcycle. He is either going to attempt to obtain a full refund from the motorcycle dealer or he will pay the creditor as soon as possible. (Item 4 at 1) Based on the account numbers in the credit report, it appears the debts in SOR ¶ 1.e and SOR ¶ 1.f are the same debt. For this reason, I find for Applicant with respect to SOR ¶ 1.f. (Item 4 at 1; Item 6 at 5)

SOR ¶ 1.g: \$382 charged-off credit card account (Item 4 at 2; Item 6 at 5). Applicant denies the debt. He claims it is a duplicate of SOR ¶ 1.a. There is insufficient evidence in the record to conclude that the debts alleged in SOR ¶ 1.a and SOR ¶ 1.g are duplicates. (Item 4 at 2)

SOR ¶ 1.h: Applicant admits not filing his state and federal tax returns for tax years 2010 to 2012. He indicated in his response to the SOR that he has not filed state and federal tax returns for several years, indicating that there are possibly more tax years that he has not filed. However, the record is unclear on this point. As of the Answer to the SOR, Applicant had not filed his state and federal tax returns for tax years 2010 to 2012. (Item 4 at 1-2; Item 5 at 31)

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 must be considered when 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining 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. Such decisions entail a certain degree of legally permissible extrapolation as to 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.” 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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition AG ¶19(a) (an inability or unwillingness to satisfy debts); AG ¶19(c) (a history of not meeting financial obligations); and AG ¶19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same) apply to Applicant’s case. Applicant incurred numerous delinquent debts that he has been unable or unwilling to pay over the past several years. He has not filed federal and state income tax returns for tax years 2010 - 2012.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several mitigating conditions potentially apply to Applicant’s 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) does not apply. Although Applicant indicates that he is beginning to resolve his debts, he has not provided a debt repayment plan. He admits he has not filed his federal and state income tax returns for 2010 - 2012. Applicant also has an unresolved tax lien entered against him in 2008. He indicates he intends to resolve all of his debts once he is in a better

financial situation. A promise to pay in the future is not sufficient to mitigate security concerns under Financial Considerations.

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) partially applies because Applicant was unemployed from May 2005 to August 2005, and from March 2013 to November 2013. His divorce also added a financial burden. Applicant encountered circumstances beyond his control which caused some financial problems. However, I cannot conclude that he acted responsibly under the circumstances because he provided no proof he is in the process of resolving his delinquent debts.

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) does not apply. There is no evidence Applicant received financial counseling and there is no indication that Applicant's financial problems are being resolved.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. While Applicant maintains he is the process of resolving his delinquent accounts, he did not provide documentation to verify the steps he is taking to resolve his financial problems. Applicant failed to demonstrate that he is making a good-faith effort to resolve the delinquent accounts alleged in SOR ¶¶ 1.a – 1.e, and 1.g.

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) applies with respect to the debt alleged in SOR ¶ 1.f. There was sufficient proof to conclude that the debts alleged in SOR ¶ 1.e and SOR ¶ 1.f were the same account. SOR ¶ 1.f is found for Applicant.

While Applicant intends to resolve all of his delinquent accounts, he has not taken substantial action towards resolving his delinquent accounts. It is too soon to conclude that his efforts will succeed. He has not mitigated the concerns raised under financial considerations.

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 the 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 the facts and circumstances surrounding this case. I considered there were several periods of unemployment which contributed to Applicant's financial problems. However, Applicant has done very little to begin to resolve his delinquent accounts. He has not filed his federal and state income tax returns for 2010 to 2012. He may not have filed for additional years, but the record is unclear.

The concern under financial considerations is not only about individuals who are prone to engage in illegal acts to generate funds. Another concern is that failure 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 which raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. In other words, if they have trouble managing their finances, this can raise doubts about their ability to handle and protect classified information. Applicant's history of financial problems raises doubts about his ability to handle and protect classified information. Mindful of my duty to resolve cases where there is doubt in favor of national security, I find Applicant failed to mitigate the concerns raised under financial considerations.

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.e, 1.g - 1.h:	Against Applicant
Subparagraph 1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge