



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-03020
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

04/11/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On October 20, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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) effective within the DOD on September 1, 2006.

In a February 25, 2015, response to the SOR, Applicant admitted all allegations. He also requested a determination based on the written record in lieu of a hearing. On April 8, 2015, the Government issued a File of Relevant Material (FORM) that contained five attachments (“Items”). Applicant did not respond within the 30 days provided. The case was assigned to me on March 3, 2016. Based on my review of the case file and submissions, I find Applicant failed to mitigate financial considerations and personal conduct security concerns.

Findings of Fact

Applicant is a 30-year-old welder who has worked for the same defense contractor since mid-2013. Before that, he worked as a mechanic for approximately a year after being employed for about two years as a part-time retail salesman. From June 2010 to September 2010, he was unemployed. He has been married for about five years. Applicant has a high school diploma.

At issue are 15 past due debts amounting to about \$19,500. These delinquent debts were discovered in credit bureau reports from 2013 and 2014. Almost half of the debt balance consists of two student loans now in collection. (SOR allegations 1.a-1.b, representing approximately \$10,800) He has neither claimed nor provided documentary evidence that any of the debts at issue are in repayment, in dispute, or have otherwise been addressed. There is no evidence he has received financial counseling. When completing Section 26 (Financial Record) of his security clearance application (SCA), he denied having had any delinquent debts in the preceding seven years. In his SOR response, he admitted deliberately failing to disclose such information in his SCA.

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 list potentially disqualifying conditions and mitigating conditions, which are 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 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. Likewise, I have not drawn 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, 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 and has the ultimate burden of persuasion to obtain 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has nearly \$20,000 in delinquent debts, as reflected in his 2013-2014 credit bureau reports. Applicant admits all the debts noted in the SOR allegations related to these debts. This is sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

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;

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;

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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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.

Applicant provided no background as to the origin of his delinquent debts. He described no efforts to address any of the accounts. He failed to dispute any of the credit report entries. In short, he made no attempt to mitigate or otherwise explain the continued neglect of these delinquent obligations. There is no evidence he has received financial counseling, nor is there any indication that progress is being made toward alleviating his financial distress. Lacking some information from Applicant regarding these accounts, none of the financial considerations mitigating conditions apply.

Guideline E, Personal Conduct

AG ¶ 15 articulates the security concern relating to personal conduct. It states that conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Here, Applicant admits that he deliberately failed to disclose any delinquent debts on his August 2013 SCA, despite the fact his credit reports indicate he has delinquent debts amounting to approximately \$19,500. Guideline E disqualifying condition AG ¶ 16(a) and 16(e) would apply:

AG ¶ 16(a) deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities . . . ; and

AG ¶ 16(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress.

Applicant offers no explanation for denying the existence of his debts and he provides no facts in mitigation of his falsification. Therefore, no mitigating conditions apply.

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 adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on 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 incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 30-year-old welder who has been continuously employed for nearly four years. Before that time, he worked part-time in retail for two years. He is married and has a high school diploma. In the past few years, he has acquired approximately \$19,500 in delinquent debts. At least half of that debt is in the form of late student loans, although little is known of any attempts at post-secondary matriculation.

In admitting responsibility for them, Applicant shared no new or relevant information about his delinquent debts. He also admitted that he intentionally falsified his SCA when he denied having had any past-due accounts in the past seven years. No information was provided regarding these accounts or any attempts to address them.

This process does not require that an Applicant satisfy all of his past-due obligations. It does, however, expect an Applicant to articulate a reasonable plan for addressing those accounts and provide some documentary evidence indicating that such a plan has been implemented. Here, there is no evidence of any efforts to address the account balances at issue. Such facts, considered in conjunction with the scant information available for a whole-person analysis, fail to overcome the financial considerations and personal conduct security concerns raised in the SOR.

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.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge