



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-00345
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire
For Applicant: *Pro se*

04/23/2015

Decision

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

Applicant failed to submit sufficient documentary evidence to mitigate Guideline F security concerns. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On April 23, 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 (AG) effective within the DOD on September 1, 2006.

In an undated response, Applicant admitted all 12 allegations raised in the SOR and requested a hearing based on the written record. On February 19, 2014, the Government issued a File of Relevant Material (FORM) that contained 10 attachments. Applicant timely responded to the FORM and submitted one document and a copy of the FORM with hand-written comments in the margins. The case was assigned to me

on April 9, 2015. Based on my review of the case file and submissions, I find Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 32-year-old Help Desk Representative who has worked for the same Defense contractor for over a year. He has a bachelor's degree. Applicant is divorced. His minor son lives with his ex-wife. Over the past decade, he has held a variety of jobs, including grill operator, deli associate, systems support technician, and desktop support. Most of his positions were full-time, except during periods of part-time employment (January to April 2004; July 2011 through May 20, 2012; March 2013 to August 2013) and unemployment (February 2010 to December 2010 and May 2012 to March 2013). The circumstances surrounding his periods of unemployment are vague and it is unclear whether his reduction to part-time work was volitional.

At issue in the SOR are a dozen delinquent debts amounting to about \$23,000. Many date back to 2008. This includes medical accounts noted at SOR 1.d (\$655), 1.e (\$318), 1.f (\$221), and 1.g (\$334), and student loan accounts at 1.j (\$11,843) and 1.k (\$4,569). Many of these debts are noted as having been paid in full or in a consolidated repayment plan, but no corroborating evidence was submitted. There is no documentary evidence showing he has ever received financial counseling. Applicant has not offered a description of his plan or methodology for approaching and addressing his debts.

The only documentary evidence Appellant offered with regard to debt payment is a letter concerning the medical debt noted at 1.f for \$221. That letter states, in part, "[a]s long as funds have cleared, this shall confirm this debt as 'Satisfied' and you will have no further obligation to the above referenced account as soon as possible." (Response to FORM, attachment) The conditional language of this letter fails to provide proof the account has been paid. Moreover, while Applicant provided some contact information regarding accounts he claims to have addressed, such verification is outside the scope of this process and the burden is on Applicant to show mitigation.

The FORM, however, shows that four of the dozen debts have been paid. The judgment noted at 1.c for \$445 is shown as satisfied at FORM, Item 7 at 1. The adverse medical judgment for \$655 at allegation 1.d is shown as satisfied at FORM, Item 6 at 1. The \$318 collection debt set forth at allegation 1.e is shown as paid in the October 2014 credit report noted at FORM, Item 4 at 2. The child support arrearage for \$741 noted at allegation 1.i is noted in that same credit report as paid. Consequently, about \$2,159 of the approximately \$23,000 at issue has been satisfied.

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. 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.

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 was delinquent on about \$23,000 in debts. Such facts are 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.

Four 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, and

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

Much of the delinquent debt initially noted remains unaddressed. While periods of unemployment and possibly underemployment appear in his work history, the underlying circumstances are vague. He offered no nexus to show that the debts are related to such periods, to his divorce, or to whatever medical conditions led to the delinquent medical obligations noted in the SOR. His allusions to progress are not substantiated by documentary evidence. The four debts the record shows were satisfied appear unrelated to a specific debt reduction plan. There is no proof he has received financial counseling. As it is, the best that can be surmised is that about \$2,000 of approximately \$23,000 was addressed in some fashion. Applicant's case is too deficient to find that any of the financial considerations 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

nine adjudicative process factors listed at AG ¶ 2(a). 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 incorporated my comments under the three guidelines at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a mature, educated man, with a broad spectrum of work experience ranging from customer service and computers to culinary preparation. Over the past decade, he has moved between full-time and part-time employment with interceding periods of unemployment under ill-defined circumstances. He or someone for whom he extends financial support received medical care, but it is unclear what kind of medical care was provided, whether health insurance should have been involved, or whether the care was emergency in nature. Four of the dozen debts at issue have been paid or satisfied, but it cannot be fully discerned how or why these particular debts were selected, how they were satisfied, the circumstances under which they were acquired. All that is known is Applicant's documentary evidence shows only nominal progress on the delinquent debt at issue, and, without more facts, can only be viewed as haphazard progress, at best.

This process does not require an applicant to address all his obligations or satisfy all of his debts. It demands, however, that an applicant methodically devise a strategy or plan to address his debts in a manageable and realistic manner. It then demands documentary evidence that such a plan has been successfully implemented. Here, the evidence is deficient to find that the finance-related security concerns were mitigated. I find that Applicant failed to mitigate security concerns arising under Guideline F.

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.b:	Against Applicant
Subparagraph 1.c-1.e:	For Applicant
Subparagraphs 1.f-1.k:	Against Applicant
Subparagraphs 1.l:	For 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