



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



In the matter of:)
)
-----) ISCR Case No. 14-00397
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esquire
For Applicant: *Pro se*

04/30/2015

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 28, 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). 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 a June 3, 2014, response, Applicant admitted, and provided comments, on the nine allegations raised in the SOR. He also requested a determination based on the written record. On July 18, 2014, the Government issued a File of Relevant Material (FORM) that contained eight attachments. Applicant submitted no materials in response to the FORM during the time provided. The case was assigned to me on April 27, 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 47-year-old operations manager working for a Defense contractor. He has no military experience. Applicant has earned a high school diploma. He is divorced and has an adult son. It is unknown whether Applicant has received formal financial counseling.

At issue in the SOR are approximately \$33,485 in delinquent debts, as noted in the SOR at allegations ¶¶ 1.a-1.i. Applicant wrote that allegations ¶¶ 1.a (\$2,109), 1.b (\$3,943), and 1.e (\$3,162) are all the same debt, a judgment that is in collection by the same legal entity. He failed, however, to provide documentary evidence supporting his assertion.

As for the remaining six debts at issue (¶¶ 1.c-d, 1f-1.i), Applicant notes that they are no longer on his credit report, as demonstrated on Applicant's June 2, 2014, credit reporting bureau profile. (FORM, Item 5) There is no evidence, however, that they have been paid, satisfied, settled, or otherwise addressed. Indeed, in his May 31, 2013, interview, Applicant conceded that he had made no attempts to repay these debts. (FORM, Item 7, May 31, 2013, Interview) Moreover, delinquent debts are frequently withdrawn from a credit report for being stale, i.e., over seven years old. This action does not relieve an applicant of responsibility for the underlying debt.

Applicant attributed his acquisition of delinquent debt to his marital separation and subsequent divorce. For example, although the monthly obligations were ultimately reduced, he was initially left with only about \$500 a month after child support and alimony. (FORM, Item 7, May 31, 2013, Interview) However, their divorce was final by February 2007, over eight years ago. No valid reasons are set forth with substantiation explaining why these delinquent debts remain unaddressed. Indeed, Applicant admitted that he had "ignored his delinquent debts due to tough times." (FORM, Item 7, May 31, 2013, Interview) Applicant failed to define the "tough times," but did note that the delinquent debts included a hot tub. (FORM, Item 7, May 31, 2013, Interview)

There is no evidence as to the status of Applicant's financial affairs in over a year. While three of the accounts at issue are labeled as "medical," no information is provided as to whether they were for unexpected or emergency treatment. The written narrative offered by Applicant is highly limited, and his evidence is scant.

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.

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. 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. . . ." See *also* EO 12968, Section 3.1(b) (multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth the security concern under this guideline as 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 nine debts, amounting to almost \$33,500. Applicant dates their delinquency back to the period of his separation and ultimate divorce, which was granted eight years ago. 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.

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.

The behavior at issue is recent to the extent there is no proof any of the multiple debts at issue have been addressed. What Applicant has done to avoid another period of distress in the future is unknown. There are insufficient facts to gauge whether he acted responsibly during his separation and divorce, although a debt for a hot tub tends not to indicate an inclination toward financial restraint. There is no evidence he has sought financial counseling, nor is there documented evidence he addressed any of the debts at issue. No 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 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 47-year-old high school graduate who is divorced and has an adult son. Applicant places the origin of his financial problems on the events culminating in his February 2007 divorce decree. There is no evidence showing what he did to economize during that period, or what he has done since that time to prepare for another unexpected contingency in the future. There is no evidence he has received financial counseling. More importantly, there is no documentary evidence of efforts to address any of the delinquent debts at issue, nor is there evidence of a plan to address these debts in the future.

This process does not require an applicant to address all debts at issue. It does, however, demand that applicants articulate a workable plan to address their delinquent debts and show that their plan has been successfully implemented. Applicant failed to carry his burden in making such a showing, or to show he has addressed any of the delinquent debts at issue. In sum, he failed to mitigate financial security concerns.

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.i: 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