



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-00398

Appearances

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

11/26/2014

Decision

HOWE, Philip S., Administrative Judge:

On July 17, 2013, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On March 26, 2014, the Department of Defense issued to 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 April 6, 2014. Applicant admitted the four allegations. Applicant requested his case be decided on the written record in lieu of a hearing.

On July 30, 2014, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on August 6, 2014. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on August 13, 2014. Applicant did not file a response to the FORM within the 30-day time allowed that would have expired on September 12, 2014. I received the case assignment on November 3, 2014. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 35 years old, married, and has two children. He works for a defense contractor and has been continuously employed there since June 2013. He was unemployed from January to April 2013. (Items 1-6)

Applicant has four delinquent debts totaling \$18,396. Applicant admitted all of the allegations. These debts are not resolved. (Items 1-6)

The first debt is \$15,059 owed on a "medical credit card" since October 2010 (Subparagraph 1.a). He used the card to pay for a surgery for his wife. He stated his unemployment from January to April 2013 adversely affected his ability to repay all his debts. He claims he sought to negotiate an installment payment agreement but the creditor demanded a \$10,000 down payment with the balance of \$5,000 to be paid on an installment plan. Applicant could not afford that scenario. He also stated that he sought credit counseling and credit repair service from an organization in July 2013 and continuing into the present. Applicant stated he benefited from their service but did not specify what services or results were provided by this company. He has not made any payment on this debt and it is not resolved. (Items 1-6)

The second delinquent debt is for \$601 for a medical debt owed since November 2008 (Subparagraph 1.b). Applicant has not made any payments on it. Applicant stated he disputed this debt many times but did not provide copies of any letters contesting this obligation. This debt originated in the summer of 2008. Applicant claims his medical insurance should have taken care of this debt. He also asserts he has tried to settle the debt but no organization will claim ownership or take payment of the debt. He is willing to try again but to date has not received a reply from anyone. This debt is unresolved. (Items 1-6)

The third debt is owed on a medical account for \$189 (Subparagraph 1.c). It has been owed since 2012. He claims he tried to pay or settle the debt but no organization has responded to his inquiries. This debt is unpaid and not resolved. (Items 1-6)

The fourth and final debt is for \$2,547 owed on a judgment since 2006 (Subparagraph 1.d). Applicant purchased a computer while living overseas. He claims he tried to get information from the collection agency but has not been successful. Now he asserts the debt has disappeared from his credit reports from the three national credit reporting agencies. This debt is unpaid and unresolved. (Items 1-6)

Applicant contends he has attempted to contact his creditors to resolve the delinquent debts but to no avail. He also asserts he is not overextended financially and is capable of budgeting properly his money. (Item 2; Answer)

Applicant 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 2006 to the present, Applicant accumulated four delinquent debts, totaling \$18,396, which remain unpaid and unresolved.

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

(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;

(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;

(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;

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

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's debt problems are continuing into the present and show a consistent pattern of lack of payment. The circumstances of incurring the debts were not unusual. The debts date from 2006 with no resolution of any of the four delinquencies. This entire scenario casts doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

The debts were not beyond Applicant's control. The debts were delinquent long before his four months of unemployment in 2013. Applicant did not demonstrate he acted responsibly under the circumstances at any time since 2006. AG ¶ 20(b) does not apply.

Applicant received financial counseling, but there is no evidence his delinquent debt problem is under control. The first part of AG ¶ 20(c) is applicable. The second part is not.

There is no evidence Applicant started any good faith-efforts to resolve his debts. AG ¶ 20(d) does not apply.

Applicant claims he disputed one or two debts. He did not submit any documents to prove that he did so. Therefore, AG ¶ 20(e) does not apply.

There is no affluence at issue in this case regarding Applicant's debts. AG ¶ 20(e) does not 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):

- (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 any action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or 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 make payments on any of his delinquent debts during the past seven years. Finally, Applicant did not submit any documents to support any of his contentions in his Answer. He made mere assertions without any credible evidence.

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. I conclude the whole-person concept against Applicant.

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
Subparagraph 1.a to 1.d:	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