



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



In the matter of:)	
)	
)	ISCR Case No. 14-00437
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esquire
For Applicant: *Pro se*

08/19/2015

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 March 24, 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. Applicant received the SOR on September 9, 2014.

In a December 26, 2014, response, Applicant admitted three of the six allegations raised in the SOR and requested a determination based on the written record. On May 28, 2015, the Government issued a File of Relevant Material (FORM) that contained six attachments. Applicant did not respond to the FORM. The case was assigned to me on August 11, 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 38-year-old who recently has worked in the computer information area, including positions such as desktop support. He served on active duty in the United States military from 1997 until 2011, when he was honorably discharged. He has earned a high school diploma and is attending college. He is married. At issue are six delinquent debts.

Applicant admits three of the obligations set forth in the SOR:

- 1) An Internal Revenue Service (IRS) debt for the tax years 2011 and 2012 – Allegation 1.a. The SOR alleges that the amount owed is \$4,000, but Applicant reports that it is for \$5,000. (FORM, Item 2 at 3) He writes that a repayment program has been negotiated with the IRS, on which he claims to have been in timely repayment since April 2012. No corroborating documentary evidence of either the plan or timely payments was introduced.
- 2) A \$209 delinquent debt owed to a power company – Allegation 1.b. Applicant writes this was paid in full and provides a confirmation number, presumably for the transaction. No documentary evidence, however, was introduced evidencing that this debt has been paid.
- 3) A \$4,608 debt to a credit card – Allegation 1.d. Applicant reports he has been in repayment on this debt for approximately six months. He writes he makes monthly payments of \$100. No documentary evidence, however, was presented to corroborate this assertion.

Applicant also denies three of the delinquent debts cited in the SOR. These debts are for a credit card (\$7,432) – Allegation 1.c, credit card (\$5,648) – Allegation 1.e, and a local collection effort (\$633) – Allegation 1.f. Applicant urges that these debts are not on his credit report, but they are on the credit report for his father. A letter from his parent's states that Applicant's father takes responsibility for these three accounts. A letter from Applicant's counselor states that the counselor's research corroborates these claims. Docket sheets for judgments against Applicant's parents for entities and sums similar to those at issue in SOR allegations 1.c and 1.e were provided. No documents are offered corroborating claims regarding SOR allegation 1.f.

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 was delinquent on six obligations for a total debt balance of over \$20,000. 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 ¶ (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.

Multiple delinquent debts remain unpaid. As a threshold issue, however, it appears the two credit card debts noted in allegations 1.c and 1.e are reasonably disputed. Court records and a letter from Applicant's father tend to show that the father, not Applicant, is responsible for these debts. Consequently, I find that AG ¶ (e) applies to these accounts.

The remaining debts amount to nearly \$10,000. No nexus was drawn between these debts and any particular set of causes, although a period of unemployment in 2011 was shown. Applicant failed, however, to show that he acted responsibly regarding his debts at the time. Moreover, it is unknown whether Applicant has received financial counseling. Although he writes that three of these debts are in repayment under established plans, there is no documentary evidence of such payment or any underlying repayment plans. Consequently, Applicant's admitted delinquent debts still represent security concerns.

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 mature, educated man with significant military experience. He experienced a period of unemployment around the time of, or shortly after, his honorable discharge from the military in 2011. Applicant provides scant details about this period. While sufficient evidence was provided to demonstrate two of the debts at issue are rightly disputed, he provided no documentary evidence of his purported progress and efforts toward the rest of the debts at issue.

This process does not require an applicant to address all debts at issue. It does, however, demand that an applicant articulate a workable plan to address his delinquent debts, and demonstrate that his plan has been successfully implemented. Here, Applicant failed to meet his burden on his admitted delinquent debts. Given the delinquent sum yet outstanding, the limited facts presented, and the lack of documentation, financial considerations security concerns remain unmitigated.

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	For Applicant
Subparagraph 1.d	Against Applicant
Subparagraph 1.e	For Applicant
Subparagraph 1.f	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