



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



In the matter of:

)	ISCR Case No. 14-00486
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

06/09/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant did not provide adequate documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On August 26, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 4) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on September 19, 2013. (Item 7) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On March 26, 2014, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in the DOD on September 1, 2006.

Applicant answered the SOR on April 25, 2014. He admitted the 12 allegations of delinquent debt under Guideline F. He elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on September 24, 2014. Applicant received a complete file of relevant material (FORM) on October 6, 2014, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely responded to the FORM on October 28, 2014. Department Counsel had no objection to the matters raised by Applicant in his response to the FORM. In fact, Department Counsel noted that Applicant corrected erroneous information in the FORM. The case had been misfiled under a case of the same name, and only recently was forwarded for a decision on the record. I was assigned to case on May 22, 2015.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 41 years old. He received his GED in 1995. He married in September 1994, and divorced in December 2005. He married again in February 2008. He has four children and one stepchild. He has been employed by various employers as a technician, computer operator, technical support, or store manager almost continually since 2002. He has been employed since 2010 by the same company, but is pending employment as an engineering technician with a defense contractor who is sponsoring his request for a security clearance. He had one extended period of unemployment from March to October 2010. (Item 4, e-QIP, dated August 23, 2013)

The SOR lists, and credit reports (Item 5, dated September 17, 2013; and Item 6, dated September 24, 2014) confirm the following delinquent debts for Applicant: two automobile loans charged off for \$18,602 (SOR 1.a), and \$993 (SOR 1.b); a credit card account in collection for \$558 (SOR 1.c); a bank account charged off for \$476 (SOR 1.d); two credit card accounts for the same creditor charge off for \$466 (SOR 1.e), and \$453 (SOR 1.f); a charged off account for \$189 (SOR 1.g); a phone account charged off for \$1,597 (SOR 1.h); a television service account in collection for \$1,357 (SOR 1.i); an account placed for collection for \$1,018 (SOR 1.j); a credit card account in collection for \$947 (SOR 1.k); a credit card account in collection for \$659 (SOR 1.l); a cable debt in collection for \$390 (SOR 1.m); and two medical accounts in collection for \$110 (SOR 1.n), and \$55 (SOR 1.o) The total amount of the alleged delinquent debt is approximately \$27,800.

Applicant stated in his response to the SOR that he has delinquent debt because he is the only person in the family working full time. His wife has been unable to find full-time steady employment. His salary is barely enough to cover the family necessities. He

also indicates his intention to pay his delinquent debts after he receives a security clearance and has the opportunity for full time employment at a higher salary.

In his response to the FORM, Applicant highlights some inaccurate statements in the FORM. The FORM states that Applicant filed a Chapter 7 bankruptcy in 2011, has unresolved tax liens, did not resolve his tax issues for over four years, and has student loans in collection. Applicant correctly points out that he never filed a bankruptcy, does not have a tax lien against him, and does not have student loans. Applicant's version of the facts is accurate and correct. I make no adverse findings against Applicant as to bankruptcy, taxes, or student loans.

Applicant did not note any actions taken to resolve any of his delinquent debts, except to note that he does not have sufficient income to pay his delinquent debts. Applicant has not indicated any inquiries about his debts to creditors, attempted to negotiate payment plans, or make payments on any of the debts.

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 must be considered 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

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, thereby raising 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant's history of delinquent debts is documented in his credit report, and his admission to the allegations in the SOR. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises both an inability and an unwillingness to pay delinquent debt.

I considered the following Financial Consideration Mitigating Condition under 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;

(b) the conditions that resulted in the financial problems 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 has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provided documented proof to substantiate the basis for the dispute or provide evidence of actions to resolve the issue.

None of the mitigating conditions apply. Applicant's unpaid debts are a continuous course of conduct and thus current. Applicant did not resolve his delinquent debts because, as he stated, he is the sole income earner for the family and his wife has not been able to find full-time steady employment. It is not unusual for a household to have only one income so there is no indication that his circumstances are unusual or conditions beyond his control. Applicant has not shown any actions taken to resolve his financial problems, to include attempts to live within the limits of his salary. The debts have not been paid and Applicant has not established a plan to pay the debts. He has not shown that he received financial advice or counseling and that the financial issues are resolved or under control. He merely blames the delinquent debts on only one source of income in the family.

Applicant has not presented a reasonable plan to assume responsibility for and resolve his financial problems. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is obvious that his financial problems are not under control. Applicant's lack of documented action is significant and disqualifying. Based on the acknowledged debts and the failure to make arrangements to pay his debts, it is clear that Applicant has not been reasonable and responsible in regard to his finances. His failure to act reasonably and responsibly towards his finances is a strong indication that he will not protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge