



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



In the matter of:)
)
) ISCR Case No. 14-00489
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

09/18/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On March 19, 2014, the Department of Defense (DOD) issued to 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on April 14, 2014. He elected to have his case decided on the written record. On May 19, 2014, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on May 29, 2014. Applicant was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any additional information. The case was assigned to me on September 15, 2014.

Findings of Fact

Applicant admitted all the allegations in SOR except ¶ 1.h. These admissions are considered findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 47 years old. He has been married twice, most recently in October 2002. He has two children, ages 17 and 10. He has held a security clearance since 2003, without incident. He has worked for the same employer since 1989.

In 2011, Applicant filed Chapter 13 bankruptcy. At the time, and not considering existing home mortgage liabilities, Applicant reported unsecured consumer debt totaling approximately \$37,081, including student loans and seven delinquent credit cards.¹

Applicant and his wife reported in their Chapter 13 filing a combined monthly gross income of \$7,884 and a net monthly take home of pay of about \$5,375. Under a Chapter 13 wage-earner plan confirmed and ordered in November 2011, Applicant was to make required monthly payments of \$1,460 for 60 months. Applicant failed to make the required payments and the bankruptcy was ordered dismissed in February 2013.²

Applicant admitted he owed the delinquent debts in SOR ¶¶ 1.a through 1.g and 1.i and 1.j, totaling approximately \$23,816. He indicated he recently paid off the debt in SOR ¶ 1.h in March 2014, but failed to provide any documents to support his statement.³

In his answer to the SOR, Applicant did not provide any explanation, documentation, or evidence for his financial difficulties or actions he has taken to resolve them.⁴

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

¹ Item 5 at 12, 13.

² Item 5 at 14.

³ Item 3.

⁴ Item 3.

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 avoided drawing 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 as to 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 that an applicant may deliberately or inadvertently fail to 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.

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

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 notes several conditions that could raise security concerns. I have considered the following under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant filed for Chapter 13 bankruptcy in 2011, which was dismissed in 2013 for failure to make the required payments. Applicant has nine delinquent debts totaling approximately \$36,027. He did not provide any evidence that he has resolved any of the delinquent debts. I find the above disqualifying conditions apply to these facts.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions 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 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; 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 provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

In his answer to the SOR, Applicant stated he paid the debt in SOR ¶ 1.h. He did not provide any documents to support his statement. Applicant did not provide evidence that he has made any payment on any of his delinquent debts. The debts are recent and unpaid. AG ¶ 20(a) does not apply because Applicant's debts are still owed. Under the circumstances, I cannot find future financial problems are unlikely to recur and that it does not cast doubt on his reliability, trustworthiness, and good judgment. Applicant did not provide any evidence as to what caused his financial problems or actions he is taking to resolve them. AG ¶ 20(b) does not apply.

There is no evidence that Applicant received financial counseling. There are not clear indications that his financial problem is being resolved or is under control. There is no evidence he made a good-faith effort to repay his overdue creditors or otherwise resolve his debts. AG ¶¶ 20(c) and 20(d) do not apply. Applicant stated he paid the debt in SOR ¶ 1.h, but failed to provide documentation to substantiate his dispute or evidence of actions to resolve the issue. 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 the 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F 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 47 years old. He has been employed by the same employer since 1989. He filed Chapter 13 bankruptcy in 2011, which was dismissed in 2013 for failure to make the required payments. He has approximately \$36,027 of delinquent debt that remains unpaid and unresolved. No additional mitigating evidence was provided. Applicant failed to meet his burden of persuasion. The record evidence leaves me with

questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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.j: 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge