



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



In the matter of:)
)
) ISCR Case No. 14-00517
)
Applicant for Security Clearance)

Appearances

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

02/12/2015

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 April 4, 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 effective within the DOD for SORs issued after September 1, 2006.

On April 22, 2014, Applicant answered the SOR, and elected to have his case decided on the written record. On October 24, 2014, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was provided to Applicant, and it was received on December 9, 2014. Applicant was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit additional information. The case was assigned to me on February 4, 2015.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.b, 1.c, 1.d and 1.n. He denied the remaining allegations. The admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 53 years old. He married in 1982 and divorced in 1992. He remarried in 1992 and has six children, ages 32, 29, 24, 22, 19 and 17. He served in the Army from 1983 until 2003, and was honorably discharged. He has been employed with his present employer since 2004.

The SOR alleged a judgment and 12 delinquent debts totaling approximately \$39,195. It also alleged that Applicant filed Chapter 7 bankruptcy in June 2004 and had his delinquent debts discharged in September 2004. The validity of the debts is supported by credit reports.¹

Applicant indicated that he paid the judgment alleged in SOR ¶ 1.a (\$930) through garnishment over a two-month period in 2012. He did not provide documentary proof that the judgment is paid, and it is listed as unsatisfied on his credit report dated October 23, 2014.²

Applicant indicated in his answer to the SOR that he attempted to negotiate settlements or arrange payment plans with the creditors for the debts in SOR ¶¶ 1.b (\$13,915), 1.c (\$8,440), and 1.d (\$1,522) but was unsuccessful. He did not provide any other information regarding his attempt to address these debts, and they remain unresolved.

In his answer to the SOR regarding the debts in SOR ¶¶ 1.e (\$1,125) and 1.m (\$123), Applicant indicated that he was unfamiliar with them. He did not provide any information on what actions he may have taken to dispute the debts or otherwise resolve them.

It appears that the debts listed in SOR ¶¶ 1.g (\$2,205) and 1.h (\$2,205) reference the same creditor and same debt. The debt in SOR ¶ 1.i (\$860) is also owed to the same creditor. Applicant denies owing those debts. He did not provide any information on efforts he may have taken to dispute or resolve the debts. He did not

¹ Items 6 and 7. In his answer to the SOR, Applicant denied this debt, but admitted it during his background interview.

² Items 4, 5 and 7.

provide documentary proof that he disputed these debts with the creditors or the credit bureau.³

It appears the debts in SOR ¶¶ 1.f (\$2,629), 1.i (\$2,073), and 1.j (\$1,857) are debts owed to the same cell phone carrier and may be duplicate debts. Applicant indicated these debts likely belong to his son who has the same name. He did not provide any information on efforts he may have taken to resolve the debts. He did not provide documentary proof that he disputed these debts with the creditors or with the credit bureau.⁴

Applicant denied the medical debt in SOR ¶ 1.k (\$1,305), believing he could not have incurred a bill this large based on his medical insurance. He did not provide any information on efforts he may have taken to resolve the debt. He did not provide documentary proof that he disputed the debt with the creditor or with the credit bureau.

In his answer to the SOR, Applicant stated he does not live above his means. He has total self-control and is willing to abide by rules and regulations. He is devoted to his large family and would never risk losing time with them. Applicant did not provide information that his current delinquent debts are attributable to any circumstances beyond his control.

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 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

³ Items 3, 6 and 7.

⁴ Items 3, 6, and 7.

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 has a history of financial problems, including a bankruptcy in which his debts were discharged in 2004. Currently, he has an unpaid judgment that he is unwilling or unable to pay. I have determined that the debts in SOR ¶¶ 1.g and 1.h are duplicates and find in his favor for ¶ 1.h. Without further information, I cannot make the same determination regarding the debts in SOR ¶¶ 1.f, 1.i and 1.j, as discussed above. Applicant's delinquent debts total approximately \$36,990. I find the above disqualifying conditions apply.

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.

AG ¶ 20(a) does not apply because Applicant has numerous delinquent debts that are not paid or resolved. He had delinquent debts discharged in bankruptcy in 2004 giving him a fresh start, and subsequently he has accumulated unpaid debts. Insufficient evidence was provided to conclude that his conduct is unlikely to recur. His actions cast doubt on his reliability, trustworthiness, and good judgment.

Applicant has been employed steadily since 2004. He did not provide information that his current delinquent debts are attributable to any circumstances beyond his control. AG ¶ 20(b) does not apply. Applicant claimed the judgment alleged in SOR ¶ 1.a was paid through garnishment, which does not constitute a good-faith resolution. The credit report does not support his assertion that the judgment was satisfied. There is no evidence Applicant participated in financial counseling or that his financial

problems are being resolved or are under control. There is no evidence Applicant has paid, resolved, or disputed the debts with the creditors or the credit bureaus, and he has not provided evidence to support his claims or resolve his financial problems. AG ¶¶ 20(c), 20(d), and 20(e) do 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 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 53 years old. He served in the Army and was honorably discharged. He has worked for his present employer since 2004. Applicant has a history of financial problems. He had delinquent debts discharged in bankruptcy in 2004, and since then has accumulated approximately \$36,990 in unpaid debts. He has not paid any of the debts and has not provided information on any current actions he may have taken to dispute or resolve the debts. 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.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.n:	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