



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-00766

Appearances

For Government: Stephanie Hess, Esquire, Department Counsel
For Applicant: *Pro se*

11/26/2014

Decision

HOWE, Philip S., Administrative Judge:

On December 5, 2013, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On April 25, 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 May 13, 2014. Applicant admitted all five allegations. Applicant requested his case be decided on the written record in lieu of a hearing.

On July 31, 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 4, 2014. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on August 11, 2014. Applicant filed a response to the FORM within the 30-day time allowed that would have expired on September 10, 2014. I received the case assignment on November 10, 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 30 years old and has never been married. He works for a defense contractor. (Item 4)

Applicant has five delinquent debts listed in the SOR. They total \$14,615. Applicant admitted all five financial allegations. He repaid one debt and the amount now delinquent is \$13,189. (Items 1-6)

Applicant owes a retail store \$621 (Subparagraph 1.a). This financial obligation became delinquent in May 2013. There is no evidence Applicant made any attempt to repay it. This debt is not paid and is not resolved. (Items 1-5)

Applicant owes a department store \$610 (Subparagraph 1.b) since July 2008. This debt is unpaid and not resolved. (Items 1-5)

Applicant owes a lending institution \$8,597 on a repossessed automobile (Subparagraph 1.c) since December 2013. This debt is not repaid and is unresolved. (Items 1-5)

Applicant owed a credit union \$1,426 on a credit card (Subparagraph 1.d) from July 2011. Applicant submitted a letter from the lender that this debt was paid on or before May 14, 2014. This debt is resolved. (Items 1-5, Answer with attachments)

Applicant owes another credit card issuer \$3,361 (Subparagraph 1.e) since July 2008. This debt is not paid and is unresolved. (Items 1-5)

Applicant claimed in his Answer that he would attempt to establish installment payment plans. However, he did not submit any documents showing any efforts to arrange such payment agreements. (Answer)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He did not submit any 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 2008 to the present, Applicant accumulated five delinquent debts, totaling \$14,615. Applicant finally resolved one of the debts, so his outstanding financial delinquencies total \$13,189.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties.

- (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 continues to owe four delinquent debts. His pattern of delinquent debts shows an inattention to his financial obligations. Applicant's failure to resolve his debts makes AG ¶ 20(a) not applicable to his situation. His actions cast doubt on his current reliability, trustworthiness, and good judgment.

Applicant did not demonstrate any reason he could not have paid these four debts before the government raised a security concern. Nor did he show why he had not paid them or established installment payment plans prior to the filing of the SOR. He did not show he acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

Applicant did not present any evidence of financial counseling. He did not show the financial problems were under control. AG ¶ 20(c) does not apply.

Applicant only repaid one delinquent debt. He has four others he has not resolved. AG ¶ 20(d) does not apply.

Applicant did not submit any evidence that he had a reasonable basis to contest any of the delinquent debts. He did not present any evidence he took any action to resolve the four remaining debts. AG ¶ 20(e) does not apply.

There is no affluence demonstrated by Applicant that would apply as a mitigating condition. AG ¶ 20(f) 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. Applicant exhibited a lack of appropriate judgment by failing to pay his debts.

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.c:	Against Applicant
Subparagraph 1.d:	For Applicant

Subparagraph 1.e:

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