



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-00894

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

10/29/2014

Decision

HOWE, Philip S., Administrative Judge:

On November 26, 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 in an undated document. Applicant requested his case be decided on the written record in lieu of a hearing.

On July 29, 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 5, 2014. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on August 18, 2014. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on September 17, 2014. I received the case assignment on October 9, 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 admitted all the six allegations in the SOR. They allege financial delinquencies totaling \$64,903. (Items 1, 2)

Applicant is 34 years old. He is married and has a teenaged stepdaughter. He is sponsored for a security clearance by a defense contractor. He does not have a security clearance now, or with prior employers. Applicant was born in 1980 and graduated from high school in 1999. He does not have a college degree. (Items 1, 3, 6)

Applicant owes six debts, none of which he has paid or made any effort to pay. The delinquencies date from 2007 and go through to 2008. (Items 1-6)

Applicant admits he owes a credit card company \$2,255 (Subparagraph 1.a). He opened the card in 2000 and the debt has been unpaid since 2007. Applicant has not resolved this debt. (Items 1-6)

Applicant admits he owes a lending company \$40,765 on an account opened in 2005 and delinquent since February 2008 (Subparagraph 1.b). The money is owed on a second mortgage on real estate Applicant purchased in 2003. This debt has not been resolved. (Items 1-6)

Applicant admits he owes a credit card company \$5,166 that has been delinquent since January 2008 (Subparagraph 1.c). This debt is unresolved. (Items 1-6)

Applicant admits he owes a finance company \$14,056 on a delinquent account since July 2008 (Subparagraph 1.d). This debt is unresolved. (Items 1-6)

Applicant owes a debt collector \$1,751 on an account delinquent since April 2008 (Subparagraph 1.e). This debt is unresolved. (Items 1-6)

Applicant owes a debt collector \$389 for an account that has been delinquent since December 2009 (Subparagraph 1.f). This debt is unresolved. (Items 1-6)

Applicant's major financial difficulties began in 2003 when he became a real estate owner and investor. Problems arose during the next five years for him. In 2008 Applicant's two properties were foreclosed on by the mortgage lenders. Applicant rented units on the properties to tenants who were to pay him rent, with which he could pay the mortgage lender the \$1,700 monthly payment. His tenants did not pay him, so he could not pay his mortgage. Applicant purchased his first property in May 2003, when he was 23 years old, for \$215,000. Then, in 2005, Applicant purchased another property for \$250,000 as an investment. Applicant did not disclose his annual income from employment between 2003 and 2008 or demonstrate in any way he could afford to purchase these two properties for over \$400,000 total cost, and service at least \$3,400 in monthly mortgage payments on the two properties at the same time. (Items 1-6)

The SOR listed debts that were related to those real estate investments in some way. The second debt in the SOR was the second mortgage on the first property he purchased. The last debt for \$389 was for water tank rentals from the local utility he installed in his rental properties and that remained there after the foreclosures on the two properties. Three other delinquent debts (Subparagraphs 1.a, 1.c, and 1.d) were on credit cards he used to pay his mortgages each month on his two properties. The final debt on the SOR (Subparagraph 1.e) was owed to a landlord on an apartment Applicant rented when he lived in the South from 2006 to 2008. The landlord charged this amount for Applicant's failure to give 60 days' notice instead of 30 days when he vacated the apartment. (Item 6)

Applicant has made no effort to repay any of these debts. He did not provide any documents to show his tenants did not pay their rents or that he made any efforts to collect from them. Applicant did not submit any documents to show he attempted to resolve any of these six debts in any way. (Items 1-6)

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 submitted no 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 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 2007 to the present, Applicant accumulated six delinquent debts, totaling \$64,903 that remain unpaid or unresolved. These debts relate to two real estate properties Applicant owned between 2003 and 2005 that were taken in foreclosure in 2008.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. None of the mitigating conditions apply.

- (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.

AG ¶ 20 (b) would apply if the financial burden and foreclosures were beyond his control and he acted responsibly under the circumstances. In 2003 when he purchased his first series of rental units Applicant was 23 years old. He did not disclose in the information he submitted with his Answer to the SOR what his annual income was, how he could afford the two rental properties he purchased between 2003 and 2005, and what efforts since 2008 he made to repay the credit card companies and bank from which he borrowed money to make monthly mortgage payments and take out a second mortgage. There is no evidence from Applicant that he made any effort since 2008 to resolve these six debts. He failed to meet his burden of proof on that issue and AG ¶ 20 (b) does not apply.

On the same facts none of the other mitigating conditions apply. Applicant has failed to submit any evidence he has done anything to resolve these \$64,903 worth of debts relating to his failed real estate ventures in the past decade.

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. He has not taken any action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past six years.

Overall, the record evidence leaves me with questions or 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
Subparagraphs 1.a to 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

PHILIP S. HOWE
Administrative Judge