



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



In the matter of:)
)
) ISCR Case No. 14-00915
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq. Department Counsel
For Applicant: *Pro se*

12/10/2014

Decision

CURRY, Marc E., Administrative Judge:

Applicant incurred delinquent debt, in part, because of circumstances beyond his control. However, his decision to let the statute of limitations for collecting these debts expire rather than pay them was not responsible. Moreover, Applicant intentionally falsified his security clearance application by failing to list his delinquent debts, as required. Applicant has failed to mitigate the security concerns.

Statement of the Case

On April 24, 2014, the Department of Defense Clearance Adjudication Facility (DOD CAF) issued an SOR to Applicant detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on May 12, 2014, admitting the allegations and requesting a decision on the written record instead of a hearing. On July 9, 2014, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on July 15, 2014 and did not file a response. The case was assigned to me on October 7, 2014.

Findings of Fact

Applicant is a 28-year-old man. He graduated from high school in 2004 and has taken some college courses. (Item 6 at 4) Since June 2007, he has worked for a defense contractor as an assembler. (Item 4 at 9)

Between 2006 and 2007, Applicant incurred approximately \$10,000 of delinquent debt, as alleged in SOR subparagraphs 1.a through 1.e. (Item 1) All of the SOR debts except subparagraph 1.d are department store credit cards. The balances of these department store credit cards range from \$79 (subparagraph 1.c) to \$842 (subparagraph 1.a). Subparagraph 1.d is a credit card Applicant opened for car repairs. Its balance is \$8,901. (Item 3)

Applicant lost control of his credit card balances between October 2006 and May 2007 when he was unemployed. (Item 4 at 9) Although he had left his job voluntarily, he did so in order to care for both his disabled parents. When Applicant obtained his current job in 2007, he did not make any effort to pay his delinquent debts, reasoning that his credit was already ruined and that he would eventually not be responsible for the debts as the statute of limitations governing their collectability would expire. (Item 6 at 5)

In 2010, Applicant got married. (Item 4 at 15) He and his wife then began saving to purchase a house. Since then, they have saved approximately \$10,000. (Item 6 at 12) They maintain a budget and have approximately \$1,922 of monthly discretionary income that they deposit into their savings account. (Item 6 at 7)

Applicant completed a security clearance application in July 2013. (Item 4) He failed to disclose any of his delinquent debts, as required, in response to questions under Section 26 asking whether in the past seven years he had ever defaulted on any loan or had a credit card charged off for failing to pay as agreed. (Item 4 at 37) Applicant contends that he did not have to list them because they had become delinquent more than seven years before completing the security clearance application, and were no longer collectible. (Item 6 at 3)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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. 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.

Analysis

Guideline F: Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Moreover, “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” (*Id.*)

Between 2006 and 2007, Applicant incurred approximately \$10,000 of delinquent debt. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions are potentially applicable:

(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 and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant’s debt became delinquent during a six-month period between 2006 and 2007 when he was unemployed and caring for his disabled parents. This constitutes a circumstance largely beyond his control and triggers the application of the first prong of AG ¶ 19(b).

Conversely, Applicant has made no effort to satisfy his delinquencies, deciding, instead, to let the statute of limitations on their collectability expire rather than satisfy them. Compounding the negative security ramifications of this decision, Applicant has had the income at his disposal to pay these debts; however, he chose to save it all to purchase a home rather than set aside some of it to develop a payment plan. While attempting to purchase a home is an admirable goal, paying one's debts is a legal obligation. Applicant's decision to ignore his delinquencies reflects a casual indifference to his obligation to pay his creditors. I conclude that none of the remaining mitigating conditions apply.

Personal Conduct

The security concern under this guideline is as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG ¶ 15)

Applicant's omission of his delinquent debts from his 2013 security clearance application raises the question of whether the following disqualifying condition under AG ¶ 16 applies:

(a) deliberate omission concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant contends that he omitted the debts because he thought the statute of limitations had expired. The security clearance application required him to disclose, among other things, any bills on which he had defaulted; any bills that had been either turned over to a collection agency, suspended, or charged off; and any bill that had been 120 days delinquent during the past seven years. It included no caveat about any statute of limitations on collectability. Given Applicant's refusal to take responsibility for paying his delinquencies, I conclude that his omissions were not caused by a misunderstanding of the question, but were, instead, a deliberate attempt to prevent derogatory information from being discovered during the investigative process. AG ¶ 16(a) applies without mitigation.

Whole-Person Concept

Under the whole-person concept, the administrative judge considers the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Applicant incurred much of his debt shortly after finishing high school. It became delinquent during a period when he was unemployed. The circumstances surrounding the conduct and his youth are partially mitigating factors. Conversely, Applicant chose to do nothing about resolving his debt. He compounded the negative security ramifications of this decision by intentionally failing to disclose these debts on his security clearance application. Upon considering this case in the context of the whole-person concept, I conclude Applicant has failed to mitigate the security concerns.

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.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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.

MARC E. CURRY
Administrative Judge