



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



In the matter of:)
)
) ISCR Case No. 14-00922
)
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

12/31/2014

Decision

WHITE, David M., Administrative Judge:

Applicant incurred more than \$25,000 in unresolved delinquent debts over the past five years. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on April 21, 2011.¹ On April 25, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under

¹Item 6.

Guideline F (Financial Considerations).² 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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on May 9, 2014, and subsequently clarified and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on September 30, 2014. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on October 17, 2014. He submitted a written response to the FORM on November 12, 2014, in which he provided additional documentation concerning his debts, made no objection to consideration of any contents of the FORM, and did not request additional time to respond.⁵ Department Counsel had no objection to the admissibility of Applicant's response to the FORM,⁶ which was admitted into the record. I received the case assignment on December 4, 2014.

Findings of Fact

Applicant is 44 years old, and has worked as an engineer in the Merchant Marine since 1999. He is married with two children, ages 21 and 15. He earned an associate's degree in 1994.⁷

In his response to the SOR, Applicant admitted each of the six debts, totaling \$26,633. He said that two small medical debts had been paid and that a \$1,357 judgment debt to a bank had been settled.⁸ Applicant's admissions are incorporated into the following findings of fact.

²Item 1.

³Items 3 and 4.

⁴The Government submitted eight Items in support of the SOR allegations.

⁵Item 9.

⁶Item 10.

⁷Item 6.

⁸Item 4.

Applicant claimed that the \$13,646 judgment debt to a bank, alleged in SOR ¶ 1.a, was being addressed through a debt resolution company that he and his wife were paying to help with a number of delinquent accounts. He provided a copy of correspondence from the company showing placement of several debts to this bank in their program, but indicating that none of those debts had been settled. He also provided copies of a district court garnishment order concerning this debt, dated May 6, 2014. His employer's response to this order was not provided. The order recited that the court sought to garnish Applicant's wages because it had ordered him to pay the creditor \$125 per month, commencing September 10, 2012, to satisfy this October 2011 judgment and he had missed two or more payments.⁹ This debt is not resolved.

Applicant provided a copy of a proposed settlement offer concerning the \$1,357 judgment debt to another bank, alleged in SOR ¶ 1.b. This May 2013 document indicated that the debt had grown to \$4,025, with interest and court fees, and offered to settle for three payments totaling \$3,050. Applicant's February 2014 credit report shows that this debt was closed, having been "paid for less than full balance."¹⁰ This debt is resolved.

Applicant claimed that the two medical debts totaling \$75, alleged in SOR ¶¶ 1.c and 1.d, had been paid. His February 2014 credit report shows both of these debts to be unpaid, after having been placed for collection in March and May 2011. He did not provide any evidence that those debts had been resolved, although he provided a letter dated November 3, 2014, showing that he sent a collection agency a \$101 post-dated check to pay three other debts for medical services rendered in January 2012, April 2012, and March 2014.¹¹

Applicant also said, without corroboration, that the two charged-off credit card debts, alleged in SOR ¶¶ 1.e and 1.f, had been or were being resolved through his debt resolution company. These debts total \$11,555 and are owed to the same bank involved in the SOR ¶ 1.a judgment debt. Both accounts became delinquent in May 2009.¹² The record evidence indicates that they remain unresolved.

The record does not address whether Applicant obtained financial counseling or established a workable budget from which his ability to resolve these delinquencies and avoid additional debt problems could be predicted with any confidence. It also lacks evidence concerning the quality of his professional performance, the level of responsibility his duties entail, and his track record with respect to handling sensitive information and observation of security procedures. No character witnesses provided statements describing his judgment, trustworthiness, integrity, or reliability. I was unable

⁹Items 4, 7, and 9.

¹⁰Items 4 and 7.

¹¹Items 4, 7, and 9.

¹²Items 4 and 7.

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 (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant has more than \$25,000 in unresolved delinquent debts that he incurred over the past five years. This raises security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's 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; 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.

The record indicates that Applicant resolved the debt alleged in SOR ¶ 1.b, so security concerns arising from that allegation are mitigated under MC 20(d). He claimed that several of the other alleged debts had been or were being resolved, but offered no evidence from which to determine the validity of these statements or establish a track record of debt resolution. He also failed to demonstrate that conditions beyond his control contributed to his financial problems or responsible action under such circumstances. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions for his remaining delinquent debts.

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 pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His delinquent debts arose over the past five years, and remain largely unresolved despite his continuous full employment during the period involved. He offered insufficient evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of his life to offset resulting security concerns. The potential for pressure, coercion, and duress remains undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

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

DAVID M. WHITE
Administrative Judge