



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



In the matter of:

)	ISCR Case No. 14-00945
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

12/08/2014

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate documentation to mitigate security concerns for financial considerations under Guideline F, and personal conduct under Guideline E. Eligibility for access to classified information is denied.

Statement of the Case

On September 26, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 5) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM). (Item 7) After reviewing the results of the interview, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On May 9, 2014, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F and personal conduct under Guideline E. (Item 1) 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 in the DOD on September 1, 2006.

Applicant received the SOR on May 19, 2014. (Item 3) He answered the SOR on June 23, 2014, admitting the five allegations of delinquent debt under Guideline F, and the one allegation of personal conduct by falsification of his security clearance application. He elected to have the matter decided on the written record. (Item 4) Department Counsel submitted the Government's written case on September 12, 2014. Applicant received a complete file of relevant material (FORM) on September 26, 2014, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. He did not provide any additional information in response to the FORM. I was assigned to case on November 14, 2014.

Procedural Issues

SOR allegation 1.a is amended to insert the word federal between the words "file" and "income." This identifies that the unfiled income tax returns were federal returns and conforms to the evidence in the file.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 37 years old and has been employed as a technician by a defense contractor since May 2013. Applicant served on active duty in the Army from June 1996 until July 2004. He received an other than honorable discharge. He has been continuously employed as a civilian since his discharge from the Army. He was a heavy equipment mechanic from May 2003 until June 2004, and a maintenance manager from August 2004 until January 2009. He worked for another defense contractor as a field service representative in Afghanistan for over four years from January 2009 until May 2013. He is a high school graduate. He was married from June 2000 until he divorced in February 2006. He has a 15 year old son who lives with Applicant's former wife. (Item 5, e-QIP, dated September 26, 2013; Item 7, Interview Summary, dated November 26, 2013)

The SOR lists, and a credit report (Item 6, dated November 19, 2013) confirms the following delinquent debts for Applicant: a tax lien for state income taxes of \$17,874 (SOR 1.b); a credit card debt in collection for \$856 (SOR 1.c); a debt for car insurance of \$941 (SOR 1.d); and a credit card debt in collection for \$1,896 (SOR 1.e). The total delinquent debt is approximately \$51,198. Applicant admits the debts with explanation. He admits with explanation that he has not filed his federal income tax returns for tax years 2010 through 2012 (SOR 1.a). He also admits he answered "no" to the question on his e-QIP asking if in the last seven years he has been over 180 days delinquent on

any debt or is currently over 90 days delinquent on any debts. He has debts as listed above (SOR 2.a). He admits the falsification of the e-QIP without explanation. (Item 4)

Applicant attributes his financial problems to his own poor financial judgment caused by his working overseas, entrusting his finances to someone with a power of attorney, and family issues from his mother's surgery. He also assisted his former wife with support of their son when she lost employment. He stated he was working to resolve his financial problems before he applied for a security clearance.

In his interview with a security investigator, Applicant attributed his failure to file his federal tax return and his state tax lien to his employment outside the United States and his tax preparer's improper filing of his tax returns. He had no information about the credit card collection account for \$856. He attributes the \$941 debt to a credit card used to purchase household item. He was unable to make timely payments because he needed funds to support his family. He stated he established a payment plan effective in December 2013. He attributes the \$1,896 delinquent debt to falling two months behind on his car payment. He intends to pay the debt but is not sure when he will start the payments. (Item 7 at 4 and 5)

In his response to the SOR, Applicant stated that his tax returns were returned because he did not provide proof that he met the criteria for tax relief for working outside the United States. He attributes the \$856 debt to fees from cancelling his cell phone service early. He attributes the \$941 debt to an insurance bill rather than to a credit card. He stated that the \$1,896 debt was because he did not follow up on his request to have two car payments assigned to the correct account. (Item 4 at 3)

Applicant provided no documentation to support any of his statements concerning his financial issues. He provided no documentation from his tax preparer. He did not provide any documentation that he has or is receiving financial counseling. Department Counsel noted in the FORM that Applicant had not provided any documents to support his statements concerning his finances in response to the SOR. Applicant provided no documents in response to the FORM. Applicant also did not provide any explanation for his failure to list on his e-QIP debts over 180 days delinquent or currently over 90 days past due.

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 must be considered 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 on the evidence contained in the record.

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.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

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, thereby raising 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant

with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage finances in such a way as to meet financial obligations.

It is well-settled that adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant's history of delinquent debts is documented in his credit reports, the OPM interview, and his SOR response. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises both an inability and an unwillingness to pay delinquent debt. His admitted failure to file his federal income tax returns also raised AG ¶ 19(g) (failure to file annual federal, state, or local income tax returns as required or the fraudulent filing of the same).

I considered the following Financial Consideration Mitigating Condition 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 problems 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 has initiated a good-faith effort to repay the 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 provided documented proof to substantial the basis for the dispute or provide evidence of actions to resolve the issue.

None of the mitigating conditions apply. Applicant's unpaid debts are a continuous course of conduct and thus current. There are frequent debts and they were incurred under circumstances that are likely to recur. The debts were not caused by circumstances beyond his control but by Applicant's own poor judgment or failure to follow up on debts. He provided no documentation of financial counseling or any good-

faith actions taken to pay or resolve his debts. Applicant must establish a "meaningful track record" of debt payment. He has not provided documentation of a "meaningful track record" of debt payments so as to establish a reasonable, prudent, honest adherence to his financial duties or obligations. A promise to pay delinquent debts in the future is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant has not presented a reasonable plan to resolve his financial problems. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is obvious that his financial problems are not under control. Applicant's lack of documented action is significant and disqualifying. Based on the acknowledged debts and the failure to make arrangements to pay his debts, it is clear that Applicant has not been reasonable and responsible in regard to his finances. His failure to act reasonably and responsibly towards his finances is a strong indication that he will not protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Personal Conduct

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

On his e-QIP, Appellant answered "no" to the question whether in the last seven years he has been over 180 day delinquent on any debt or is currently over 90 days delinquent on any debts. As noted in the SOR and the credit report, Applicant was delinquent on debts, had not filed his federal tax returns for at least three years, and had an unresolved state tax lien. His failure to list his delinquent debts raises a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(a) (the 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 eligibility or trustworthiness, or award fiduciary responsibilities).

Applicant admitted the allegation of falsification and did not offer any explanation or response. Applicant knew he had delinquent debts. With no explanation of why he did not include the debts on his security clearance application, the only conclusion to

draw is that the failure was deliberate with intent to deceive. I find that none of the mitigating conditions apply and that Applicant deliberately failed to provide correct and accurate financial information on the security clearance application. He knew of his debts and failed to alert the Government to those financial issues. I find against Applicant as to personal conduct.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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 the facts and circumstances surrounding this case. Applicant has not provided sufficient credible documentary information to show reasonable and responsible action to address delinquent debts and resolve financial problems. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. He provided no explanation or documentation to establish that he did not provide false information on his security clearance application. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation and personal conduct. Eligibility for access to classified information is denied.

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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge