



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



In the matter of:)
)
) ISCR Case: 14-01076
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

November 24, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant accumulated approximately \$35,000 in delinquent debt. He resolved two of his debts, totaling \$660, but remains indebted on his delinquent mortgage. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On November 1, 2013, Applicant submitted a security clearance application (SF-86). On May 5, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on May 29, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) Department Counsel submitted the Government's written case on September 4, 2014. A complete copy of the File of Relevant Material (FORM), containing nine Items, was provided to Applicant on said date, 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 September 10, 2014, and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA). He did not provide additional information in response to the FORM within the 30-day period. DOHA assigned the case to me on November 3, 2014.

Findings of Fact

Applicant is 48 years old. He has worked for a Government contractor since June 2010. He is married and has three adult children. (Item 6.)

The SOR alleges Applicant owes approximately \$35,000 in delinquent debt. In his Answer to the SOR, Applicant admitted the debt in SOR ¶ 1.a and denied the debts in SOR ¶¶ 1.b and 1.c. (Item 4.) His debts are found in the credit reports entered into evidence dated December 7, 2013 and August 27, 2014. (Item 8; Item 9.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

As of the date of the SOR, Applicant was over 120 days past due on his home mortgage loan, in the approximate amount of \$34,421. Applicant stopped paying on his mortgage over three years ago after he refinanced his residence. During the process of the refinancing, the mortgage company added in the cost of home owner's insurance to his mortgage payment, creating a payment that was much higher than Applicant expected. Applicant contested the addition of the insurance and found a lower insurance quote, but the mortgage company would not allow him to switch. As a result, he stopped making payments on his mortgage. Applicant has been in recent contact with the mortgage company, but offered no proof of resolution. This debt is now past due in the amount of \$44,052 and remains unresolved. (Answer; Item 7; Item 8.)

Applicant was indebted on a collections account in the approximate amount of \$468, as stated in SOR ¶ 1.b. In his Answer, Applicant claimed that this debt belonged to his son, who has the same name as Applicant. His August 27, 2014 credit report reflects this debt was paid. (Item 7.)

Applicant was indebted to a communications company in the amount of \$192, as alleged in SOR ¶ 1.c. Applicant presented a copy of a receipt showing a payment of \$192.61 was made to this creditor on May 27, 2014. This debt is resolved. (Answer.)

Applicant resolved \$660 of the \$35,000 in SOR-listed debts. His August 27, 2014 credit report reflects one new \$15 delinquency. (GE 8.) He failed to submit evidence of financial counseling, a budget, or income statement. He submitted no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He provided no character references describing his judgment, trustworthiness, integrity, or reliability.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, 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 relating to 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Since 2011, Applicant accumulated over \$35,000 in delinquent debt that he was unable or unwilling to satisfy until recently, when he resolved two debts totaling \$660. The evidence raises both security concerns, 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.

Applicant's delinquent debt began accumulating in 2011. He remains delinquent on his mortgage debt in an amount that has grown from \$34,421 to \$44,052. His most recent credit report reflects a new \$15 delinquent debt. He did not demonstrate that future financial problems are unlikely to occur. His reliability and trustworthiness in managing delinquent debts remain a concern. The evidence does not support the application of AG ¶ 20(a).

Applicant failed to present evidence that his financial problems were due to circumstances beyond his control. He failed to provide evidence that he acted responsibly under the circumstances or that he attempted to resolve the debts while they were accumulating, despite full-time employment. AG ¶ 20(b) has no application.

Applicant failed to provide evidence that he participated in financial counseling or that he had a plan to fully resolve his debts. However, he addressed two SOR-listed debts, identified in ¶¶ 1.b and 1.c, which are now resolved. AG ¶ 20(c) has no application to ¶ 1.a, as there are not clear indications that his delinquent mortgage is under control. Applicant's payment of ¶¶ 1.b and 1.c indicates a good-faith effort to resolve those debts. Hence, AG ¶ 20(d) has application to the SOR-listed debts in ¶¶ 1.b and 1.c.

Applicant contended that he disputed the cost of the insurance that was added to his refinanced mortgage. He failed to provide documented proof to substantiate the basis of his dispute or provide evidence of any actions to resolve it. AG ¶ 20(e) has no application.

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.

According to 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 a 48-year-old employee of a defense contractor. He remains delinquent on his debt to his mortgage company in the amount of \$44,052. Although Applicant paid off two small debts, he failed to establish a track record of responsibly managing his finances. Overall, the record evidence leaves me with 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 under the guideline for 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:	For 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.

Jennifer I. Goldstein
Administrative Judge