



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-01079
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

05/12/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant failed to present information to mitigate financial security concerns.

Statement of the Case

On November 11, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated September 9, 2014, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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 answered the SOR on October 8, 2014. He admitted five allegations of student loan debts, and denied three allegations of consumer debt. Department Counsel was prepared to proceed on January 15, 2015, and the case was assigned to me on January 29, 2015. DOD issued a notice of hearing on March 2, 2015, scheduling a hearing for March 18, 2015. The hearing was postponed, and a new notice of hearing was issued on March 13, 2015, scheduling a hearing for April 8, 2015. I convened the hearing as scheduled. The Government offered three exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 3. Applicant testified but did not submit any documents. I kept the record open until April 25, 2015, for Applicant to submit documents to support his assertion that he was paying his student loans, and also paid one other debt (SOR 1.a) in full. As of May 8, 2015, Applicant has not submitted any post-hearing documentation to either Department Counsel or me. I received the transcript of the hearing (Tr.) on April 16, 2015.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 42 years old and has been employed as a senior web developer for a defense contractor since July 2010. Applicant received a bachelor's degree in computer science in May 1998. He was first married in February 1997, and divorced in September 2010. He married again in October 2010, and separated in June 2012. He has five children. There were no periods of unemployment listed on the e-QIP. (GX 1, e-QIP, dated November 6, 2013)

The SOR alleges, and credit reports (GX 2, dated July 28, 2014, GX 3, dated December 11, 2013) confirm the following debts for Applicant: a charged off credit card debt for \$523 (SOR 1.a); five student loan accounts in collection for the U.S. Department of Education for \$8,537 (SOR 1.b), \$8,537 (SOR 1.c), \$2,224 (SOR 1.d), \$8,537 (SOR 1.e), and \$9,628 (SOR 1.f); an account in collection for \$1,134 (SOR 1.g); and a debt to a telephone company in collection for \$548 (SOR 1.k). The total amount of the debt is approximately \$39,000, with over \$37,000 of the debt attributed to the delinquent student loans

Applicant stated that the student loans have been consolidated into one debt and that he has been making monthly payments on the debts for over a year. He did not provide any documents to verify his payment plan or his payments either at the hearing or post-hearing. (Tr. 14-15) He stated that the credit card debt at SOR 1.a has been paid in full. He did not provide any documents to support his claim. He stated he has no knowledge of the debt at SOR 1.g but he would research the debt. He believes it may be a student loan that was not consolidated. He denied the debt to the telephone company at SOR 1.h. He admitted that, in the past, he had service with the company, but that all bills had been paid. He thought his former wife may have continued service with the carrier after they divorced and he was no longer responsible for the bills.

Applicant did not provide any documents at or after the hearing to verify any actions taken to resolve the debts at SOR 1.a, 1.g, and 1.h. (Tr. 14-20)

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 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 in seeking 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 that the applicant may deliberately or inadvertently fail to 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

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, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her 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 at risk of acting inconsistently with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. The five student loans and the three consumer debts are listed as delinquent in the two credit reports. The credit reports establish that the delinquent debts are a security concern. The evidence is sufficient to raise security concerns under the following Financial Considerations Disqualifying Conditions under AG ¶ 19:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

I considered the following Financial Considerations Mitigating Conditions 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; and

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

The mitigating conditions do not apply. The majority of the delinquent debts are student loans Applicant used to finance his education. The debts were not incurred under circumstances beyond his control. His e-QIP shows steady employment since Applicant received his college degree. Applicant presented no information that he received financial counseling. For a good-faith effort to apply under AG 20(d), there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. 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 must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan. Applicant stated he has a plan to pay his student loans, and has been doing so for over a year. He was provided the opportunity to present documentation of his financial plan and payment of debts, but he failed to provide any plan or payment documentation. Applicant stated he has no knowledge of the two remaining debts. (SOR 1.g and 1.h) He was to research the debts. He provided no explanatory information on the results of his research after the hearing.

Applicant has not shown that he managed his personal financial obligations reasonably and responsibly. There is ample evidence of irresponsible behavior, lack of good judgment, and unreliability. Based on all of the financial information, I conclude that Applicant has not mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 the facts and circumstances surrounding this case. Applicant has not provided documents that he has paid or is now paying his delinquent debts. Applicant has not established that he acted reasonably and responsibly towards his finances, and that he can and will responsibly manage his financial obligations in the future. The lack of information shows Applicant's irresponsible management of his finances which indicates that he will not be concerned or act responsibly in regard to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated security concerns arising under the financial considerations guideline. 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.h:	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.

THOMAS M. CREAN
Administrative Judge