



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



In the matter of:)	
)	
)	ISCR Case No. 14-01198
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

11/15/2015

Decision

WHITE, David M., Administrative Judge:

Applicant incurred more than \$278,000 in delinquent debts over the past decade. He recently entered into a debt resolution plan addressing fewer than half of them, despite employment in his current position since December 2008. 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 (SF-86) on October 22, 2013.¹ On June 4, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² The action was taken under

¹Item 3.

²Item 1.

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 July 23, 2014, 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 March 25, 2015. A complete copy of the File of Relevant Material (FORM)⁴ was received by Applicant on May 10, 2015, 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 submitted additional material in response to the FORM on June 4, 2015, to which Department Counsel had no objection. This response to the FORM is admitted as Applicant's Exhibit (AE) A. I received the case assignment on July 14, 2015.

Findings of Fact

Applicant is 52 years old, and seeks renewal of his security clearance in connection with his work as a marine engineer for a defense contractor. He is recently married to a woman with whom he cohabited for about 20 years, and has an adult daughter who was raised by and resides with her mother in a Southeast Asian country. He has no military service. He has held a security clearance since about 2001.⁵

In his response to the SOR, Applicant admitted the truth of the 13 allegations concerning delinquent debts.⁶ He entered five of these debts into a debt resolution program under which he made monthly payments of \$1,195 starting in May 2013, and said that the remaining debts had been "closed," apparently due to their age.⁷ Applicant's admissions are incorporated as findings of fact.

Applicant worked as a civilian employee of the Military Sealift Command from June 1988 until July 2004, when he was unable to renew his U.S. Coast Guard Merchant Marine license due to outstanding issues from his conviction for Driving Under

³Item 2.

⁴Department Counsel submitted six Items in support of the SOR allegations.

⁵Item 3; AE A.

⁶The debts alleged in SOR ¶¶ 1.j and 1.k, as well as those alleged in SOR ¶¶ 1.l and 1.m, respectively are based on credit report entries by the original creditors and the collection agencies that later acquired those debts. Only the allegations concerning debts owed to the collection agencies in SOR ¶¶ 1.j and 1.m will be used for analysis of Applicant's delinquencies, which accordingly number 11 and total \$278,129.

⁷Item 2.

the Influence (DUI) during August 1993. He also reported on his SF-86 that “other issues” prevented renewal of his Coast Guard license, potentially including his admitted convictions for another DUI and cocaine possession in March 1989. As a result of his inability to renew the license, Applicant was unemployed from July 2004 until December 2008, when his current employer hired him.⁸ Applicant traces his financial problems to this extended period of unemployment.

Applicant’s credit reports document six delinquent debts, totaling \$192,075 that are not enrolled in his debt resolution plan. The majority of this total reflects the charged-off \$161,000 balance due on a mortgage loan that was foreclosed after he stopped making payments in August 2007.⁹ He opened that loan in an April 2006 refinancing secured by the home he purchased in 1999. He offered no information from which to determine his present obligations with respect to this mortgage debt. He also offered no evidence concerning resolution of the other five “closed” debts that are not enrolled in the plan,¹⁰ which comprise \$31,075 of consumer and credit card accounts.¹¹

Applicant explained that when he resumed working in December 2008 he used his earnings to pay off delinquent tax debts, to send funds to his daughter for her living and college expenses, and to pay his current living expenses. In May 2013, after his company’s Government contract was renewed with attendant prospects for his continued employment, he entered into a debt resolution plan with a company to address the other five of his SOR-listed delinquent debts, which totaled \$86,054.¹² He said that the debt resolution company informed him that his other delinquent debts did not need to be included in the plan, but offered no evidence to corroborate this claim.

As of the close of the record, Applicant had made regular payments into the debt resolution plan for 25 months, totaling \$29,875. The most recent plan account statement that he submitted showed the status of two of these debts to be, “Resolved”; two others to be, “Active Negotiation”; and the final one to be, “Ongoing Structure.” No definition of these status categories was provided, but the statement showed large “Current Balance” figures for all five accounts, totaling \$86,811. The only account statements Applicant submitted from the original creditors involved were more than five years old,¹³ and the debt plan statement did not reflect any disbursements toward the debts. That statement included a pie chart showing that 74% of his debt was “Settled,” despite

⁸Item 3.

⁹SOR ¶ 1.h.

¹⁰SOR ¶¶ 1.a, 1.b, 1.c, 1.g, and 1.j.

¹¹Items 2-6; AE A.

¹²SOR ¶¶ 1.d, 1.e, 1.f, 1.i, and 1.m.

¹³Item 2.

being only 25 months into a 48-month program, and showed his progress tracking below his “Program Savings Goal.”¹⁴

Applicant provided no evidence establishing his current income. He submitted a hand-written document entitled, “MONTHLY BILLS,” that showed expenses of \$1,852 and debt program payments of \$1,195, for a total of \$3,047 per month. This “budget” had no entries for food, medical or renter’s insurance, clothing, entertainment, or other miscellaneous cost of living expenses. Applicant offered no evidence of financial counseling, savings or retirement investments, or other indicators of financial responsibility.¹⁵

The record lacks corroborating evidence concerning the quality of Applicant’s professional performance, the level of responsibility his duties entail, or 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 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.

¹⁴AE A.

¹⁵AE A.

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 admittedly has more than \$192,000 in unresolved delinquent debts that are not enrolled in his debt resolution plan, and has paid \$29,875 toward resolution of the five program debts, which total more than \$86,000. His ongoing pattern and history of inability or unwillingness to pay lawful debts raise security concerns under DCs 19(a) and (c), and shift 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 has incurred substantial delinquent debts, which continue to date. He offered evidence of recent participation in a debt resolution plan addressing some of them, but continues to carry a large amount of unresolved debt. He failed to demonstrate that conditions beyond his control contributed to his financial problems, since his criminal conduct was the cause of his unemployment, or that he acted responsibly under such circumstances by seeking other employment not requiring a Coast Guard license. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning a delinquent debt, and Applicant admitted owing the debts alleged in the SOR. Accordingly, the record is insufficient to establish mitigation under any of the foregoing conditions.

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 and experienced adult, who is responsible for the voluntary choices and conduct that caused the financial problems underlying the security concerns expressed in the SOR. His SOR-listed delinquent debts arose over the past decade, and remain largely unresolved despite employment in his current position since December 2008. 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 from his financial situation 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
Subparagraphs 1.a through 1.j:	Against Applicant
Subparagraphs 1.k and 1.l:	For Applicant (as duplicates)
Subparagraph 1.m:	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