



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-01476
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esquire, Deputy Chief Department Counsel
For Applicant: *Pro se*

05/19/2015

Decision

HOGAN, Erin C., Administrative Judge:

On June 13, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing the 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 (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

On July 7, 2014, Applicant answered the SOR and requested that his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on March 3, 2015. The FORM was forwarded to Applicant on March 3, 2015. Applicant received the FORM on March 9, 2015. He had 30 days to submit a response to the FORM. He timely submitted a Response to the FORM, which is admitted as Item 4. Department Counsel did not object to Applicant's Response to the FORM. Department Counsel's response to Applicant's Response to the FORM is admitted as Item 5. On April 23, 2015, the FORM was forwarded to the hearing office and was assigned to me on April 24, 2015.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admits to SOR allegations 1.a – 1.e. (Item 1)

Applicant is a 52-year-old employee of a Department of Defense contractor seeking to obtain a security clearance. Applicant has been employed with the company since August 2013. Prior to his current employment, he worked for various contractors since April 2001. He has a high school diploma. From June 1982 to June 1985, he served on active duty in the U.S. Navy. He received an Honorable Discharge. He is married and has a 27-year-old stepdaughter. He has held security clearances in the past while on active duty in the U.S. Navy and in 2003 while working for a defense contractor. (Item 3)

Applicant completed an electronic questionnaire for investigations processing (e-QIP) on October 31, 2013. (Item 3) In response to section 26 of the e-QIP, Applicant listed four debts: a \$2,505 charged off account related to a car loan (SOR ¶ 1.c: Item 3, 45 of 49); a \$246 account placed for collection (SOR ¶ 1.d: Item 3, 44 of 49); a \$147 cable television account placed for collection (SOR ¶ 1.e: Item 3 at 46-47 of 49); and a \$1,900 loan to repair a car (Item 3 at 46 of 49). Applicant's background investigation revealed the above accounts and two additional delinquent accounts: a \$12,750 student loan that was past due (SOR ¶ 1.a: Item 2 at 2); and a \$2,756 account placed for collection. (SOR ¶ 1.b Note: This account is not listed in the credit report provided in the record evidence. However, Applicant admits to the debt in his response to the SOR.)

In his response to the SOR, dated July 7, 2014, Applicant admits to all of the debts. He was unaware of the debt alleged in SOR ¶ 1.a, but recently received a letter from the creditor. He intends to pay off all of the debts alleged on the SOR. (Item 1 at 2).

In his response to the FORM, Applicant states that he paid off two debts. He paid off the \$147 cable television debt alleged in SOR ¶ 1.e. The credit report, dated February 13, 2015, indicates that this debt was paid. (Item 2 at 2) The other debt was not alleged in the SOR. It was a \$471.30 car repair account. Applicant did not provide receipts for this debt. Applicant is paying off debts a little at a time. He has had several challenges over the last five years. He was laid off from three jobs. His wife is in poor health and has not been able to work for three years. He is doing all he can to pay off his debts. (Item 4)

A credit report dated February 13, 2015, lists two additional delinquent accounts that were not alleged in the SOR. The first is a \$229 unpaid storage company account. The second is a \$2,916 unpaid account. Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular

adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. (ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). I have considered the evidence regarding these two additional delinquent accounts that were not alleged in the SOR for these limited purposes.

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 when 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant incurred numerous delinquent debts that he has been unable or unwilling to pay over the past five years.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several mitigating conditions potentially apply to Applicant’s case.

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) does not apply. Applicant’s financial problems remain because most of his debts are unresolved.

AG ¶ 20(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) partially applies because Applicant was laid off three times over the past five years. In addition, his wife is in poor health and has been unable to work over the past three years. Applicant encountered circumstances beyond his control which caused some financial problems. However, I cannot conclude that he acted responsibly under the circumstances because I am not aware of the full status of his financial situation. There is no evidence in the case files regarding Applicant’s monthly income, monthly expenses, and current debt obligations. I am unable to determine the extent of Applicant’s financial problems to conclude whether he acted responsibly under the circumstances.

AG ¶ 20(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) does not apply. There is no evidence Applicant received financial counseling. Most of Applicant's debts remain unresolved. For this reason, I cannot conclude there are clear indications that Applicant's financial problems are being resolved and/or are under control.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to debt alleged in SOR ¶ 1.e. While Applicant resolved one account. The remaining delinquent accounts remain unresolved at the close of the record. Applicant failed to demonstrate that he is making a good-faith effort to resolve the remaining delinquent accounts.

He has not mitigated the concerns raised under financial considerations.

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 the 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 the facts and circumstances surrounding this case. I considered Applicant's active-duty service with the U.S. Navy and his Honorable Discharge. I considered his favorable employment history with defense contractors. I considered there were circumstances beyond his control which contributed to Applicant's financial problems, including being laid off three times over a period of five years, and his wife's inability to work based on her poor health condition.

The concern under financial considerations is not only about individuals who are prone to engage in illegal acts to generate funds. Another concern is that failure 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 which raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. In other words, if individuals have trouble managing their finances, this can raise doubts about their ability to handle and protect classified information. Applicant's history of financial problems raises doubts about his ability to handle and protect classified information. Although Applicant intends to resolve his debts, it is premature at this time to conclude that his financial situation has stabilized. Mindful of my duty to resolve cases where there is doubt in favor of national security, I find Applicant failed to mitigate the concerns raised under financial considerations.

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.d:	Against Applicant
Subparagraph 1.e:	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 interests to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge