



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



In the matter of:)
)
) ISCR Case No. 14-01483
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

06/12/2015

Decision

WHITE, David M., Administrative Judge:

Applicant incurred more than \$57,000 in delinquent debts over the past four years, and failed to document resolution of any of them. His home is in foreclosure. 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 on November 20, 2012.¹ On June 12, 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 Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960),

¹Item 2.

²Item 1.

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 29, 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 February 24, 2015. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, 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 April 1, 2015. He submitted no additional material in response to the FORM, made no objection to consideration of any contents of the FORM, and did not request additional time to respond. I received the case assignment on May 22, 2015.

Findings of Fact

Applicant is 41 years old, and has worked for a defense contractor since November 2009. He is married, with an 18-year-old stepson. He served on active duty in the Navy from March 1994 to September 2007, and was honorably discharged in pay grade E-6. He worked for another defense contractor from September 2007 to November 2009, when he voluntarily left for his current position. He has held a security clearance since his time in the Navy.⁵

In his response to the SOR, Applicant admitted all of the allegations concerning his ten delinquent debts, totaling \$57,137.⁶ He also admitted that his home mortgage is in foreclosure with an outstanding balance of \$252,821. Applicant's admissions are incorporated as findings of fact.

Record credit reports show that eight of the SOR-listed delinquent debts,⁷ ranging from \$74 to \$36,534 and totaling \$54,498, had dates of last activity between October 2011 and February 2012. A medical debt in the amount of \$2,521 was reduced

³Item 1.

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

⁵Item 2.

⁶These debts are documented in the credit reports at Items 3, 4, and 5; except that the amount of \$528.00, alleged in SOR ¶ 1.d, appears as \$1,296 in those credit reports. Additionally, the debt alleged in SOR ¶ 1.f increased from \$1,507 to \$1,783 in his most recent credit report at Item 5.

⁷SOR ¶¶ 1.b, 1.c, 1.d, 1.e, 1.f, and 1.g.

to judgment in May 2013.⁸ Applicant's insurance company placed a \$118 debt for collection in November 2012.⁹ Applicant's home mortgage loan, opened in October 2004 with a high credit amount of \$252,821, had a balance due of \$211,869 when it became delinquent in December 2012. It is currently in foreclosure.¹⁰

The record does not address whether Applicant obtained financial counseling. He offered no evidence showing a workable budget, from which his ability to resolve his admitted delinquencies and avoid additional debt problems could be predicted with any confidence. Applicant said in his security clearance application that he, "Got behind on payments," for the credit card debt alleged in SOR ¶ 1.b in late 2007 after he separated from the Navy, was involved in a motorcycle accident, and his son broke his arm skateboarding. Concerning his other debts he said, "Got behind on payments after getting behind on others."¹¹ He offered no explanation for his sudden inability or unwillingness to pay his debts after late 2011, or of any steps he took to rectify the situation.

The record lacks 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.

⁸SOR ¶ 1.a.

⁹SOR ¶ 1.j.

¹⁰SOR ¶ 1.h. Items 3, 4, and 5.

¹¹Item 2.

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 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 owes more than \$57,000 in unresolved delinquent debts that he incurred over the past four years, and his home mortgage loan is being foreclosed. He provided no evidence of any effort to repay or otherwise resolve any of these debts. His ongoing pattern and history of inability or unwillingness to pay lawful debts raises security concerns under DCs 19(a) and (c), and shifts 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 no evidence from which to establish a track record of debt resolution. He failed to demonstrate that conditions beyond his control contributed to his financial problems, or that he acted responsibly under such circumstances. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning a delinquent debt, and Applicant admitted owing each debt alleged in the SOR. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions.

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 underlie the security concerns expressed in the SOR. His SOR-listed delinquent debts arose over the past four years and remain unresolved despite his continuous employment during the period involved. 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.k:	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