



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-01523

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

12/29/2014

Decision

HOWE, Philip S., Administrative Judge:

On January 18, 2013, Applicant submitted his electronic version of the Security Clearance Application (e-QIP). On June 5, 2014, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 on September 1, 2006.

Applicant answered the SOR in writing. Applicant responded on July 18, 2014. Applicant requested his case be decided on the written record in lieu of a hearing.

On October 8, 2014, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on October 16, 2014. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on October 24, 2014. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on November 23, 2014. I received the case assignment on December 15, 2014. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted all 26 allegations pertaining to financial delinquencies and unpaid personal income taxes. (Items 2-6)

Applicant is 31 years old. He is married. Applicant has one child. He served in the U.S. Navy from August 2009 to September 2012. He works for a defense contractor. He was unemployed from September 2012 to November 2012 after leaving active military duty. His wife has been unemployed since February 2014. (Items 5, 8)

Applicant has 25 delinquent financial obligations totaling \$53,751. He accumulated these delinquencies between 2002 and 2012. He paid his 2009 federal income taxes of \$2,784 (Subparagraph 1.c). The other debts remain unpaid. Applicant failed to file his 2008 federal income tax form for 2008 (Subparagraph 1.a). He owes \$3,000 on his 2008 income tax account (Subparagraph 1.b). (Items 5, 6, 7)

Applicant submitted documents showing he contacted several of his creditors on July 18, 2014, by mail offering to pay \$5 to \$10 on each debt (Subparagraphs 1.d to 1.e, 1.g to 1.k, 1.o to 1.y). He submitted letters pertaining to all debts listed in the SOR except Subparagraphs 1.f, 1.l, 1.m, and 1.n. There are no documents from the creditors accepting or rejecting the offers of payment. These debts are owed to credit unions, banks, a jeweler, two cell telephone companies, and a cable television company, among other creditors. One debt is the subject of a garnishment action for \$1,910 owed on a military credit card account (Subparagraph 1.z). Garnishment is not a voluntary effort to repay this debt. (Items 5-8)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, 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 and mitigating conditions, which are useful 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, the administrative judge applies the guidelines 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(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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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."

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 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. 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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

From 2002 to the present, Applicant accumulated 25 delinquent debts and income tax obligations, totaling \$53,751. Of his debts, 24 remain unpaid or unresolved, with the sole exception being the \$2,784 paid on his 2009 federal income taxes.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. None of the mitigating conditions apply.

The unpaid debts are recent, frequent, and cast doubt on Applicant's current reliability, trustworthiness, and good judgment. He incurred a large number of credit card and other debts during the past 10 years and has not repaid them. AG ¶ 20 (a) does not apply.

The conditions that resulted in the financial delinquencies were not beyond Applicant's control. He and his wife were employed at the same time until her 2014 loss of work. He had two incomes he could have used to pay off some of this debt. Also, he

could have not spent the money he did and could have filed his 2008 and 2009 federal income taxes. Eventually he did pay the 2009 income taxes according to the letter from the Internal Revenue Service he submitted as an exhibit. Applicant did not act responsibly under the circumstances. AG ¶ 20 (b) does not apply.

Applicant has not received any counseling regarding his finances. If he did, he did not submit any exhibits to show he had any such advice. AG ¶ 20 (c) does not apply.

Applicant has not demonstrated a good-faith effort to repay his debts. He offered his creditors \$5 to \$10 on each debt, but evidently never received a reply because he did not submit any documents to that effect as exhibits. AG ¶ 20 (d) does not apply.

Applicant did not submit any evidence that he had a reasonable basis to dispute the legitimacy of any of the debts. AG ¶ 20 (e) does not apply.

There is no evidence of any affluence resulted from a legal source of income. AG ¶ 20 (f) does not apply.

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 facts and circumstances surrounding this case. Applicant was an adult when he

incurred the debts. He has not taken any action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past ten years.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the whole-person concept against Applicant.

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 to 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d to 1.z:	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.

PHILIP S. HOWE
Administrative Judge