



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



In the matter of:)
)
) ISCR Case: 14-01575
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

December 11, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant accumulated approximately 26 delinquent debts totaling \$16,168. Applicant failed to address any of his delinquencies. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On November 25, 2013, Applicant submitted a security clearance application (SF-86). On June 5, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on July 2, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) Department Counsel submitted the Government's written case on September 8, 2014. A complete copy of the File of Relevant Material (FORM), containing seven Items, was provided to Applicant on September 10, 2014, 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 September 19, 2014, and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA). He did not provide additional information in response to the FORM within the 30-day period. DOHA assigned the case to me on November 20, 2014.

Findings of Fact

Applicant is 26 years old. He has worked for a Government contractor since October 2013. He is a high school graduate. He is single and reported no children. (Item 6.)

The SOR alleges Applicant owes approximately \$16,168 in delinquent debt to 26 creditors. In his Answer to the SOR, Applicant admitted the debts in SOR ¶¶ 1.a through 1.n, 1.p, 1.r through 1.y and denied the debts in SOR ¶¶ 1.o, 1.q, and 1.z, with little explanation. (Item 3.) His debts are found in the credit report dated January 1, 2014. (Item 5.) After a thorough and careful review of the pleadings, and exhibits I make the following findings of fact.

Every entry on Applicant's January 2014 credit report is a collection account and corresponds with a delinquent account alleged in ¶¶ 1.a through 1.z of the SOR. Applicant indicated that his debts were attributable to a period of unemployment, low paying jobs, and to a move out of state. (Item 4; Item 6.) He was unemployed from August 2013 to October 2013, March 2013 to July 2013, April to May 2012, and February 2009 to March 2011. (Item 4.)

Fifteen of Applicant's debts (¶¶ 1.c through 1.n, 1.r, 1.t, and 1.v) are related to unpaid medical debts incurred as a result of Applicant not having medical insurance. Three of Applicant's debts are for unpaid traffic tickets that have been delinquent since 2009 (¶¶ 1.a, 1.b, and 1.w). He is also delinquent on: a cable bill (¶ 1.o); a loan from a jeweler (¶ 1.p and duplicated in ¶ 1.x); a security system account (¶ 1.q and duplicated in ¶ 1.z); an electric bill (¶ 1.s); a telephone bill (¶ 1.y.) and one other unidentified account (¶ 1.u.). (Item 5; Item 6.)

Applicant indicated in an email that he has contacted a hospital charity to seek help with his medical bills. He also indicated he was going through transportation problems. However, he offered no further explanations or documentation regarding the

current status of his debts or his ability to repay these delinquencies. (Item 7.) He failed to submit evidence of financial counseling, a budget, or income statement. He submitted no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He provided no character references describing his judgment, trustworthiness, integrity, or reliability.

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 (AG) list potentially disqualifying conditions and mitigating conditions, 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.

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 relating to 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Since 2009, Applicant accumulated over \$16,000 in delinquent debt that he has been unable or unwilling to satisfy. The evidence raises both security concerns, thereby shifting 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's delinquent debt began accumulating in 2009. He remains delinquent on all of the debts listed on the SOR. He did not demonstrate that future financial problems are unlikely to occur. His reliability and trustworthiness in managing delinquent debts remain a concern. The evidence does not support the application of AG ¶ 20(a).

Applicant's debts are due to several periods of unemployment and underemployment. However, he failed to provide evidence that he acted responsibly under the circumstances or that he has attempted to resolve his debts since becoming employed by a Government contractor in 2013. Some of his debts are relatively small, including two different \$32 collections, yet they remain unsatisfied. Applicant has made little effort to act responsibly with respect to his debts. AG ¶ 20(b) has limited application.

Applicant failed to provide evidence that he participated in financial counseling or that he had a plan to fully resolve his debts. Further, AG ¶ 20(c) has no application as there are not clear indications that his delinquent debt is under control. AG ¶ 20(d) does not apply because Applicant failed to show he has made a good-faith effort to repay any overdue creditors or otherwise resolve his debts.

Applicant failed to dispute any of his SOR alleged debts. AG ¶ 20(e) has no application.

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.

According to 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 a 26-year-old employee of a defense contractor. He remains delinquent on all of the SOR-listed debts. He failed to establish a track record of responsibly managing his finances. Overall, the record evidence leaves me with 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 under the guideline for 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
Subparagraph 1.a through 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.

Jennifer I. Goldstein
Administrative Judge