



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



In the matter of:)
)
) ISCR Case No. 14-01599
)
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

May 22, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is delinquent on eight debts, in the total amount of \$71,375. He failed to produce documentation to show he has addressed any of his delinquencies. He has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 4, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On September 25, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 September 1, 2006.

Applicant answered the SOR on November 18, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on February 18, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 5, 2015, scheduling the hearing for April 20, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf and offered one exhibit marked Applicant Exhibit (AE) A, which was also admitted without objection. The record was left open for Applicant to submit additional exhibits until April 24, 2015. Applicant failed to submit anything further for consideration, and record was closed on April 24, 2015. DOHA received the transcript of the hearing (Tr.) on April 29, 2015.

Findings of Fact

Applicant is 41 years old. He served on active duty with the Army from 1994 to 1996. He was married to his first wife from 1998 to 2006, when they divorced. He married his second wife in 2012. He has been employed by a Government contractor since September 2014. (GE 1; Tr. 34-35.)

The Government alleged that Applicant is ineligible for a clearance because he has made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR alleged that Applicant is delinquent on eight debts, in the total amount of \$71,375. In his Answer, Applicant admitted to each debt. (Answer; Tr. 9.) The alleged debts were also listed on credit reports dated December 7, 2013; August 21, 2014; and February 2, 2015. (Answer; GE 2; GE 3; GE 4.)

Applicant attributes his financial delinquencies to his decision to finance the purchase of a home with a mortgage that had fluctuating interest rates. (Tr. 23.) He was also unemployed for several significant periods including: April 2010 to February 2012; April to July 2012; and May to August 2013. (GE 1; Tr. 36-37.)

Applicant is indebted to a bank in the amount of \$10,935, as stated in SOR allegation 1.a. He testified that this debt was for a car loan. He claimed that he fully resolved the debt and later sold the vehicle. He failed to produce any documentation to support his claims. This debt is unresolved. (Tr. 25-26, 38.)

Applicant is indebted to a creditor for two delinquent student loans in the amounts of \$1,361 and \$814, as alleged in SOR subparagraphs 1.b and 1.d, respectively. Applicant testified that his Federal income tax refunds have been garnished toward the repayment of this debt. He failed to produce any documentation to support his claims. This debt is unresolved. (Tr. 26-27, 39-42.)

Applicant is indebted to a bank for a charged-off account in the amount of \$1,569, as stated in SOR allegation 1.c. Applicant testified he did not recognize this debt. This debt is unresolved. (Tr. 28-30.)

Applicant is indebted to a city for a rental business tax in the amount of \$335, as stated in SOR allegation 1.e. Applicant testified he contacted this creditor and was told the debt was “closed out.” He failed to present any documentation with respect to the status of this debt. This debt is unresolved. (Tr. 30, 43-44.)

Applicant is indebted to a bank in the amount of \$43,000, as stated in SOR allegation 1.f. Applicant testified that this debt was for a home equity line of credit. The home that secured the loan was foreclosed upon by the primary mortgage holder in 2008. Applicant failed to introduce documentation showing the status of this debt. It is unresolved. (Tr. 30-31, 44.)

Applicant is indebted on a medical collections account in the approximate amount of \$3,858, as stated in SOR allegation 1.g. Applicant testified that this debt was an error because it should have been covered as part of a medical study that he was enrolled in. However, he failed to present documentation showing that he disputed this debt. It remains unresolved. (Tr. 31-32, 45.)

Applicant is indebted on a judgment in the amount of \$9,503, as stated in SOR allegation 1.h. Applicant testified that this debt related to his foreclosed property. It is unresolved. (Tr. 30.)

Applicant presented a letter from his supervisor that “recommend[ed] him as a highly professional, trustworthy, and responsible individual.” (AE A.) Applicant failed to submit evidence of financial counseling, a budget, or income statement.

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 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2(a) 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 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, the 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.” The applicant has the ultimate burden of persuasion to obtain 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 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 EO 10865 provides that adverse 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 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 notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant remains indebted to eight different creditors in the amount of \$71,375. He demonstrated both a history of not addressing his debt, and an inability or

unwillingness to do so. The evidence is sufficient to raise the above disqualifying conditions.

The following Financial Considerations mitigating conditions (MC) under AG ¶ 20 are potentially applicable:

(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 substantial delinquent debts are recent and ongoing, without indication that the circumstances under which they arose have changed. He therefore failed to fully establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). He attributed his delinquencies to periods of unemployment and fluctuating interest rates on his mortgage. While his unemployment is a circumstance beyond his control, his decision to enter into a mortgage with a fluctuating interest rate was a risk he accepted when he applied for his mortgage. Further, his unwillingness to resolve even one of his delinquencies does not show responsible action under the circumstances.

Applicant did not undergo financial counseling. He failed to document any effort to resolve the SOR-listed delinquent debts. These facts preclude mitigation under MC 20(c) or 20(d).

Applicant claimed to have a reasonable basis to dispute the legitimacy of several of his past-due debts because he believed them to be paid, resolved, or not his responsibility. However, he failed to provide documented proof to substantiate the basis

of his disputes or provides evidence of the actions he has taken to resolve the issues. MC20(e) does not fully 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 all of the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant's inability to resolve his financial obligations raises concerns about his reliability, trustworthiness, and ability to follow rules and regulations necessary to protect classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge