



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



In the matter of:)	
)	
)	ISCR Case: 14-01702
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

10/13/2015

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of financial delinquencies. He filed a Chapter 13 bankruptcy in 2004, but continued to accumulate delinquent debts beginning in 2007. He provided sufficient proof that he resolved 2 of the 11 delinquent debts, but not the others. 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 December 12, 2013, Applicant submitted a security clearance application (SF-86) for an investigation. On June 16, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) 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 in the DOD after September 1, 2006.

Applicant answered the SOR (Answer) on August 7 and 14, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing. (Items 2 and 3.) On June 4, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing nine Items, was provided to Applicant on June 10, 2015, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on June 19, 2015, and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA). He provided one document in response to the FORM within the 30-day period. I marked that document, which he had previously submitted with his Answer, as Appellant Exhibit (AE) A and admitted it into the record. (Item 3 at 8.) DOHA assigned the case to me on August 10, 2015.

Ruling on Evidence

Item 5 is a Report of Investigation (ROI) from the background investigation of Applicant. The six-page document is a summary of an interview of Applicant the Government conducted on February 5, 2014. An ROI may be received and considered as evidence when it is authenticated by a witness.¹ Although Applicant, who is representing himself, has not raised the issue via an objection, I am raising it *sua sponte*. While it is clear that Department Counsel is acting in good faith, having highlighted the issue in the FORM,² Item 5 is not authenticated. Applicant's failure to authenticate it is not a knowing waiver of the rule.³ Accordingly, Item 5 is not admissible and is not considered in this Decision.

Findings of Fact

In his answer to the SOR, Applicant admitted responsibility for the SOR allegations contained in Paragraphs 1.a, 1.b, and 1.e. He denied the remaining nine debts and offered explanations. (Item 3.) Those admissions are incorporated into these findings of fact.

Applicant is 44 years old. He is married and has three children. He has worked for a defense contractor for about five years. Prior to this job, he attended school

¹Directive, Enclosure 3, ¶ E3.1.20; see ISCR Case No. 11-13999 (App. Bd. Feb. 3, 2014) (the Appeal Board restated existing case law that a properly authenticated report of investigation is admissible).

² Department Counsel Brief at 2, n 1.

³ Wavier means "[t]he voluntary relinquishment or abandonment – express or implied – of a legal right or advantage; the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." *Black's Law Dictionary*, 1717 (Bryan A. Garner ed., 9th ed., West 2009).

fulltime from 2008 to 2009 to become certified in information technology. After obtaining the certification, he worked for a private company before starting his current position. (Item 3 at 3.)

Applicant attributed his financial problems to a decrease in the family income while he was in school. During that time the family lived solely on his wife's income. He said that his current position provides him enough money to pay delinquent debts. He is making "better financial decisions." (Item 3 at 3.) His student loans totaling \$13,238 are in good standing. (Item 3 at 38.) In August 2013 he hired a law firm to help resolve his debts and credit rating. He did not submit any documentation from the law firm confirming the resolution of debts since it began assisting Applicant. He did not provide a budget documenting his income, expenses, and discretionary income.

Based on credit bureau reports (CBR) dated May 2010, December 2013, and February 2015, the SOR alleged a bankruptcy, and 11 delinquent debts totaling \$21,265, which accumulated between 2007 through 2013. The status of each SOR debt is as follows:

1. (¶ 1.a) This \$580 debt is a credit card debt. Applicant said he agreed to make two payments of \$159.23, one in July and one in August 2014. At the time of his Answer, he said he made the July payment, but did not supply proof of payment. The debt does not appear on the February 2015 CBR. (Item 9.) There is insufficient proof verifying that the debt is paid and resolved.
2. (¶ 1.b) The \$8,373 debt relates to an automobile repossession. Applicant stated that the debt was in good standing and cited his July 2014 CBR. That CBR does not show that the debt is in good standing. It states that the account is closed and the current status is "repossession". (Item 3 at 35.) It is unresolved.
3. (¶ 1.c) Applicant denied owing this \$2,592 debt to a former landlord. In August 2014 he said he was working with the law firm he hired and was disputing it. There is no evidence verifying a dispute or any indication that the debt is resolved. (Item 3.) It is unresolved.
4. (¶ 1.d) The \$2,362 debt was paid and resolved. The July 2014 CBR states that debt was settled for less than the full amount. (Item 3 at 35.)
5. (¶ 1.e) Applicant stated that he agreed to resolve the \$1,555 debt owed to a former landlord with three payments of \$244.84, the first payment starting in September 2014. (Item 3 at 15.) Applicant did not submit proof of any payments. The debt is unresolved.

6. (¶ 1.f) In 2004 Applicant filed a Chapter 13 bankruptcy. He denied filing it and noted that it is not on his July 2014 credit report. (Item 3.) It was listed on his May 2010 CBR. (Item 7.)
7. (¶ 1.g) Applicant denied owing a \$524 debt a to a creditor and noted that it is not on his July 2014 credit report. (Item 3.) It was listed on his May 2010 CBR. (Item 7.) It is unresolved.
8. (¶ 1.h) Applicant denied owing a cable company debt of \$221. He noted that it is not on his July 2014 credit report. (Item 3.) It was listed on his May 2010 CBR. He did not supply proof of payment or other evidence to document its resolution. It is unresolved.
9. (¶ 1.i) Applicant denied the \$701 debt owed to a creditor because he said he settled the account. The July 2014 CBR states that the account was disputed and is resolved. (Item 3 at 33.)
10. (¶ 1.j) Applicant said he resolved the \$701 debt owed to a creditor with four payments he made in 2013, and noted that it is not on his July 2014 CBR. (Item 3.) He did not supply proof of the payments. It was listed on the May 2010 CBR. It is unresolved.
11. (¶ 1.k) Applicant said he paid the \$3,396 debt with the proceeds from the sale of his home in October 2013. He noted that it was not on his July 2014 CBR, indicating the debt is resolved. He did not supply proof of said payment or evidence to document its resolution. It is unresolved.
12. (¶ 1.l) Applicant said he was resolving the \$280 debt through a payment plan, and that the final payment was to be made in August 2014, at which time it would be removed from his credit report. (Item 3 at 6.) It does not appear on the February 2015 CBR. He did not supply proof of any payments or evidence to document its resolution. It is unresolved.

In June 2015 Applicant received the FORM, which informed him that the evidence he previously submitted with his August 2014 Answer was not sufficient to document the resolution of the delinquent SOR debts. Department Counsel also stated in the FORM that a debt “dropping off” a credit report due to age was not proof of resolution. (FORM at 2.) Applicant did not submit any additional documentation subsequent to receipt of the FORM.

Applicant stated he obtained credit counseling through the law firm assisting in the resolution of his debts. (Item 3 at 3.) He submitted no evidence concerning the quality of his performance, or the level of responsibility his duties entail. 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.

Applicant has a history of delinquent debts, which began in in 2004 when he filed a bankruptcy. Since then he accumulated delinquent debts between 2007 and 2013. He has been unable or unwilling to satisfy or resolve them. 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 debts continue to date. Because he failed to provide sufficient information that 9 of the 11 SOR-listed debts are resolved, he did not demonstrate that such problems are unlikely to continue or recur. His reliability and trustworthiness in managing delinquent debts remain of concern. The evidence does not support the application of AG ¶ 20(a).

Applicant provided evidence that his financial problems arose because he attended school between 2008 and 2009, which placed a strain on the family budget. He did not explain the circumstances underlying the 2004 bankruptcy. While his decision to attend school and obtain a better position, is reasonable, that decision is not a circumstance that was beyond his control, as contemplated under this guideline. Hence, AG ¶ 20(b) does not apply.

Applicant stated that he participated in credit counseling with the law firm helping him resolve debts. Although he addressed each debt in his Answer, he failed to provide sufficient documentation to support his assertions that many of the debts are resolved, other than stating that they are no longer on his credit report. There are minimal indications that his delinquent debts are under control. Thus, AG ¶ 20(c) does not apply. He provided documentation that he made a good-faith effort to resolve 2 of the 11 SOR-listed debts. Hence, AG ¶ 20(d) has application to the debts alleged in SOR ¶¶1.d and 1.i. Although Applicant said he was disputing debts, he did not provide sufficient evidence that he had a reasonable basis to dispute them. 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 44 years old. He has a history of financial problems, dating back to 2004, when he filed a Chapter 13 bankruptcy. He has been employed with a defense contractor for over five years, and began resolving debts in 2013 with the assistance of a law firm. He provided credible evidence that he resolved 2 of the 11 SOR-listed debts, but did not provide credible evidence that he paid or resolved the remaining nine debts. Although he has taken steps to address his financial obligations by hiring a company to assist in the resolution of debts, he did not present evidence documenting their work or a budget that demonstrates his ability to address unresolved debts. In June 2015 he had an opportunity to submit additional documentation to verify his assertions that many of the debts were resolved. He failed to do so, and seemingly relied on the fact that many debts are no longer on his credit report, which is not credible evidence for this proceeding. At this time he has not presented sufficient evidence to establish a track record of managing and resolving debts. The likelihood that similar problems will continue is significant, and the potential for pressure, coercion, or duress is undiminished.

Overall, the record evidence leaves me with doubt as to Applicant's 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
Subparagraphs 1.a through 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e through 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant

Subparagraph 1.j through 1.l: 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.

SHARI DAM
Administrative Judge