



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



In the matter of:

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ISCR Case No. 14-01744

Applicant for Security Clearance

Appearances

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

02/11/2015

Decision

WHITE, David M., Administrative Judge:

Applicant incurred substantial delinquent indebtedness but, despite reporting more than \$1,500 in monthly surplus income, demonstrated neither means nor efforts to resolve any of it. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on January 25, 2013. On June 9, 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). 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*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on September 30, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 11, 2014. The case was assigned to me on October 20, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on November 20, 2014, and I convened the hearing, as scheduled, on December 5, 2014. Applicant and the court reporter attended the hearing in person. Department Counsel participated from DOHA Headquarters by video teleconference. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf, I granted Applicant's request to leave the record open until December 19, 2014, for submission of documentary evidence. DOHA received the transcript of the hearing (Tr.) on December 15, 2014. Applicant timely submitted exhibit (AE) A, which was admitted without objection and the record closed.

Findings of Fact

Applicant is a 59-year-old employee of a defense contractor, where he has worked since December 2012. He is married, with five adult children. He is a high school graduate, and earned an associate's degree from a community college in 1982. He served for three years in the Air Force, after which he began a 16-year period of DoD employment as a rigger in a Navy shipyard. He then worked for 15 years as a rigging supervisor for a private shipyard; after which he took retirement benefits and started his current employment as a rigger. He has held a security clearance for most of his adult life. (GE 1; Tr. 8-9, 20-21, 29.)

In his response to the SOR, Applicant admitted the allegations concerning delinquent debts set forth in SOR ¶¶ 1.a through 1.c, 1.g, 1.i, 1.j, 1.p, and 1.r through 1.t. He denied the other 12 SOR allegations of delinquent debts. (AR.) Applicant's admissions are incorporated in the following findings.

Applicant's credit bureau reports substantiate the existence of all of the delinquent debts alleged in the SOR. Applicant offered no evidence supporting his denial of responsibility for any of the debts that he denied in his answer to the SOR. His documented delinquencies comprise 23 debts totaling \$25,745, which he failed to pay over the past ten years. They include judgment debts, a car loan he cosigned for his daughter, utility bills, credit cards, and 15 debts to local governments ranging from \$60 to \$1,518. He did not document any payment toward, or basis to dispute, any of these debts. (AR; GE 2; GE 3; GE 4; Tr. 43-45.)

Applicant provided a personal financial statement reporting \$6,129 in net monthly income; \$3,285 in monthly living expenses; and \$1,271 in monthly debt payments toward his first and second home mortgages. The income includes \$808 in presumed disability payments received by his wife, who has been disabled since 2004. Despite Applicant's resulting net monthly remainder of \$1,571, he reported bank savings of, "N/A \$2000" and no payments toward his delinquencies. (AE A.)

Applicant provided 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 submitted 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 (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.

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.

The record evidence potentially raises 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 accrued more than \$25,700 in delinquent debts over the past decade, and demonstrated neither the means nor any effort to resolve them. This evidence raised security concerns under DCs 19(a) and (c), 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 23 SOR-listed delinquent debts are recent and ongoing, without indication that the circumstances under which they arose have changed. He therefore failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). His wife is disabled, but apparently receives over \$800 per month in compensation which contributes to their family budget. He has been fully employed during the period he incurred substantial delinquent debts, and has not taken steps to resolve even municipal debts as small as \$60. This is not responsible action under the circumstances.

Applicant did not undergo financial counseling. He neither documented any substantially effective effort to repay or otherwise resolve any of the SOR-listed delinquent debts, nor asserted a legitimate basis to dispute their validity. These facts preclude significant mitigation under MC 20(c), (d), or (e).

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 has incurred

substantial delinquent indebtedness to commercial lenders and local governments that he has made no effort to repay. These debts remain outstanding, creating the ongoing potential for pressure and duress. The evidence does not support a finding that continuation or recurrence are unlikely, or that behavioral changes demonstrate rehabilitation. He is a mature and experienced individual who is accountable for his choices and financial irresponsibility. Overall, the record evidence creates ongoing doubt as to Applicant's present eligibility and suitability for a security clearance.

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.w: 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