



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



In the matter of:)
)
) ISCR Case No. 14-01761
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

05/19/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On July 2, 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 effective within the DOD for SORs issued after September 1, 2006.

On October 20, 2014, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. On January 28, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was provided to Applicant on February 25, 2015, and it was received on March

11, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information, which was included in the record without objection. The case was assigned to me on May 4, 2015.

Findings of Fact

Applicant admitted SOR allegations ¶¶ 1.a and 1.b. He denied the remaining allegations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old. He served in the military from 1998 to 2012 and was honorably discharged. He began working for a federal contractor in 2012. Applicant is married.¹

The SOR alleges six delinquent debts. Applicant attributes his financial problems to a separation FROM his wife in 2009 and later their divorce. He indicated since then he has been paying his delinquent debts. He has not used a credit card in five years and his current finances are stable and have been for two and a half years. Credit reports from July 2012, January 2014, and January 2015 establish the debts in the SOR.

Applicant admitted the debt in SOR ¶ 1.a (\$3,850) and indicated he is making payments. In his response to the FORM, he indicated he made two payments in October and November 2012. He has not made any recent payments. He indicated “my current focus has been paying off the other debts I have . . . and I will take care of this debt as I did the current others.” It is not resolved.²

Applicant admitted the debt in SOR ¶ 1.b (\$229) to a communications company. He believed it is many years old and stated he will take care of it after paying other debts. He did not provide additional information about the status of this debt in his response to the FORM. It is not resolved.³

Applicant has been making inconsistent payments for the debt in SOR ¶ 1.c (\$6,975). He provided receipts to show in October 2012 he made a \$496 payment. He provided documents to show from July to December 2013 he made monthly payments of \$50. In January, March, April, and October 2014, he made \$50 payments. In January,

¹ Item 4.

² Item 3; Response to FORM.

³ Item 3.

February, and March 2015, he made \$50 payments. His April 2015 statement reports a balance owed of \$6,174.⁴

The debt in SOR ¶1.d is a \$158,882 mortgage loan that is more than 180 days past due. Applicant stated that after he and his wife separated in 2009, he experienced significant hardship as he adjusted to having to pay child support. He had difficulty paying the full monthly mortgage payment and then could not make the payment at all. He missed payments and partial payments for about a year before contacting the mortgage lender. He indicated that working with the mortgage lender was frustrating and their system was designed to make the mortgagee fail. He was not permitted to make a payment unless he brought the account current. He attempted to resolve the issue through a deed in lieu of foreclosure, but was unsuccessful. He did not receive any new communication from the mortgage lender. He moved out of the house in the summer of 2012. In his answer to the SOR, he stated later he rented the house and has made payments every month. It is unknown if he still resides in the house

In Applicant's response to the FORM he reiterated the frustration he had with dealing with the mortgage lender:

I absolutely take full responsibly for accruing the debt, becoming behind on payments; however, the system in place at [mortgage lender] was not set up for you to succeed in working through that issue. The federal government itself recognized the many issues that were present in [mortgage lender] mortgage department, to include other companies, and the US Gov[ernment]t itself brought suit and won. I have attached attachment 6-8, the letter and check I received as my compensation for their illegal practices. Yes, I became late on my payments. I absolutely deny any suggestion that I just ignored it and walked away.⁵

Applicant provided a copy of a check for \$1,000 from his mortgage lender. The correspondence from February 2015 stated it is payment as a result of an agreement between the federal banking regulators and the mortgage lender in connection with an enforcement action related to deficient mortgage servicing and foreclosure processes. The amount Applicant received was based on the stage of the foreclosure process and other considerations related to his foreclosure. No other information was provided as to the current status of this debt.⁶

⁴ Response to FORM.

⁵ Response to FORM.

⁶ Response to FORM.

Applicant indicated that he is making payments on the debt in SOR ¶ 1.e (\$656). He referred to documents he submitted to show he has been making payments since November 2012. None of the documents provided correspond to this debt.⁷

The debt is SOR ¶ 1.f (\$2,705) was settled and paid in 2012. He provided documents to show the payments. The debt is resolved.⁸

Applicant stated he has never hidden his financial problems. His financial situation has never been more stable and it is improving monthly. His annual income is \$106,080. He began contributing 6% of his income to a 401(k) account in December 2014 and his employer matches 4%. He and his wife have a joint savings account that he deposits \$200 a month into and as of March 2015 it had a \$1,200 balance. It is their emergency fund. He also has an emergency cash fund of \$500. Resolving his delinquent debt is important to him.⁹

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 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

⁷ The collection company for this debt is the same as the debt in SOR ¶ 1.c. It is unclear if Applicant is referring to the same debt.

⁸ Item 7, 8; Response to FORM.

⁹ Response to FORM.

Under 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security 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 that an 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 Executive Order 10865 provides that 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 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 notes several conditions that could raise security concerns. I have considered the following under AG ¶ 19:

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

Applicant has five delinquent debts that are several years old and not resolved. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributes his financial problems to his 2009 separation and divorce. He had difficulty paying his mortgage and other debts became delinquent. AG ¶ 20(a) does not apply because Applicant is still resolving his delinquent debt.

Applicant's divorce was a condition beyond his control. For the full application of AG ¶ 20(b), there must be evidence that Applicant acted responsibly under the circumstances. It appears Applicant attempted to work with the mortgage lender to resolve his delinquent mortgage, but became frustrated due to their questionable practices. He stopped making his mortgage payments and moved out of the house. He then moved back in as a tenant. It appears Applicant was compensated for irregularities related to the foreclosure process. The debt remains on his most current credit reports. He admitted he failed to pay the mortgage and was delinquent. It is unknown if the house was sold and if there is a deficiency. Applicant failed to provide sufficient information to make a determination as to the current status of the debt and whether it is resolved. Applicant has made inconsistent payments on the debt in SOR ¶ 1.c without explanation. He has not paid or resolved the debts in SOR ¶¶ 1.a, 1.b, or 1.e and did not provide a realistic plan for when he intends to resolve these debts. Applicant has not acted responsibly towards resolving these debts. AG ¶ 20(b) partially applies.

Applicant did not offer evidence that he has received financial counseling. Although he indicated that his finances are stable; that he earns an income over \$100,000; contributes to his company's retirement plan; and he is making monthly deposits in his savings account; he failed to provide evidence of his actions to pay his remaining delinquent debts. Despite having resources to save money and contribute to his retirement plan, he has made no payments to the debt in SOR ¶ 1.a since 2012; he

has not addressed the relatively small debt in SOR ¶ 1.b; he has made inconsistent payments to the debt in SOR ¶ 1.c; and there is no evidence of payments to the debt in SOR ¶ 1.e. There are not clear indications the delinquent debts are being resolved or that Applicant has made a good-faith effort to resolve the debts. AG ¶ 20(d) only applies to debt in SOR ¶ 1.f because he has settled and paid it. AG ¶ 20(c) 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 the 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 the 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 is 37 years old. He experienced financial difficulties in 2009. His frustration with dealing with the mortgage lender is understandable. It is unknown what the current status is on his mortgage debt as he did not provide sufficient evidence on it. Applicant failed to show he is addressing his delinquent debts responsibly. The minimal evidence of mitigation is insufficient to meet his burden of persuasion. 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 Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge