



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



In the matter of:)	
)	
)	ISCR Case No. 14-01960
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

04/17/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On July 24, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations). The action was taken Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960) as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated January 30, 2015.¹ Applicant received the FORM on February 18, 2015. Applicant did not submit any evidence in response to the FORM. I received the case assignment on April 13, 2015. Based on a review of the case, I find Applicant has not mitigated the security concerns raised. Eligibility for a clearance is denied.

¹The Government submitted 14 items in support of its case.

Findings of Fact

In his answer to the SOR, Applicant admitted all allegations under Guideline F, with the exception of ¶¶ 1.c-1.d with explanations. (Item 4)

Applicant is 45 years old. He is employed with a defense contractor. He graduated from high school in 1988 and attended technical classes for a time, but has not obtained a degree. Applicant married but separated from his wife in June 2012. He has been employed with his current employer since May 2012. On April 10, 2013, he completed a security clearance application. (Item 4)

The SOR alleges six delinquent debts totaling approximately \$16,000, including failure to file federal and state income tax returns for tax years 2010 and 2011. (Item 1) (Item 1) Credit reports confirm these matters. (Items 6 and 7)

Applicant explained in his Answer that he would be hiring tax lawyers to assist him in filing his federal and state tax returns for 2010 and 2011. He stated that he hired Lexington Law Firm to assist with a payment plan for four debts. As to the student loans in collection he has enrolled in a rehabilitation program. He has made payments of \$190 monthly and expects to complete the scheduled payment program in November 2014.

Applicant has a history of financial problems. His financial problems begin in the 1990s. His record includes a bankruptcy in 1997. He has had delinquent accounts on and off since 2001. Applicant explained that he did not file his state and federal tax returns for 2010 and 2011 because he and his wife separated. They separated in 2012. (Item 5)

Applicant was candid that his other financial delinquencies are due to his inability to manage his finances. (Item 12) With regard to his student loans, Applicant stated that he stopped paying on them because the school had been shut down by the federal government for fraud.(Item 12)

Applicant submitted evidence that he filed his federal tax returns for tax years 2010 and 2011; however, the documentation shows that his filings were considered incomplete by the IRS, who required additional documentation. There is no evidence in the record that the issue was resolved. (Item 4). Applicant has still not filed his state income tax returns for those years. He stated that he was hiring someone to help, but there is no explanation as to why that has not occurred.

A January 2015 credit report shows that Applicant's student loans are now rehabilitated and current. (Item 6) This confirms his earlier claims that the loans would be current by November 2014.

As to the debt alleged in SOR 1.e, the balance has decreased from \$671 to \$417. (Item 6) However, a new delinquency is reflected on that same credit report. (Item 6)

Applicant's annual gross salary is about \$126,000. There is information in the record indicating that Applicant obtained financial counseling.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a security clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.”

Applicant’s admissions and credit reports establish the collection accounts delinquent debts, student loans, and untimely filing of state and federal taxes. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), FC DC AG ¶ 19(c) (a history of not meeting financial obligations) and FC DC 19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant’s financial difficulties make it difficult to conclude that it occurred “so long ago.” “An unpaid debt is a continuing course of conduct for the purposes of DOHA adjudications.” ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant still has unresolved delinquent debt. He has provided evidence of rehabilitation of the student loans, but there is no evidence of filing of state income tax returns. Also, the filing for federal income tax returns was

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

incomplete. There is no evidence that the issue has been resolved. There is no evidence of other payments or plans to address other accounts, except for the allegation in SOR 1.e. The delinquent obligations remain. He has incurred a new delinquent debt reflected on his latest credit report. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) partially applies.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant's financial difficulties occurred due to mismanagement of his financial affairs by his own admission. After the SOR, he began to hire people to help resolve the tax issues. He still has unresolved tax issues. He receives no credit under this mitigating condition.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant has rehabilitated the student loans. He has not presented sufficient information to show mitigation. He presented evidence that he received financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) applies. Given the ultimate burden, I find that there not are clear indications that his financial problems are being resolved and are under control.

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 45 years old. He has worked for his current employer since 2012. It is not clear from the record whether he previously held a security clearance. Applicant attended a technical institute and obtained student loans so that he could attend the classes. He is trying to educate himself and develop skills to aid in employment. His student loans are rehabilitated and current. However, despite his intentions to file tax returns and resolve other issues since receiving the SOR, he has not done so. He does not have a track record of making payments on his debts. An applicant does not have to have paid all his delinquent debts to mitigate the security concern under financial considerations guideline. However, he must have a plan in place to resolve the financial issues.

Applicant relied on the written record and did not have a hearing. I do not have sufficient evidence in the record to find that Applicant has met his burden of proof.

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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g-1.h:	For Applicant
Subparagraphs 1.i-1.j:	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 a eligibility for a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge