



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



In the matter of:)	
)	
)	ISCR Case No. 14-02006
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

10/08/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On July 16, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (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 review based on the written record in lieu of a hearing. The case was assigned to me on October 1, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated August 20, 2015¹. Applicant received the FORM on September 11, 2015. Applicant timely submitted a response to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

¹The Government submitted four items for the record.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations (1.a through 1.e), but denied the remaining allegations under both Guideline F. He also provided explanations.

Applicant is 44 years old. He is separated from his wife, and they have two children. He has been employed as a truck driver with his current employer since 2013. (Item 4) Since 2013, Applicant has held a TSA Transportation Worker Identification Card (TWIC). He completed an application for a security clearance on February 14, 2014.

Financial

The SOR alleges 13 delinquent debts totaling approximately \$13,921, of which two are vehicle repossessions, five are medical accounts, and some are collection accounts. (Item 4) In his answer to the SOR, Applicant stated that he plans to settle debts as soon as his divorce is final. He states that some of the debts are his wife's bills.

Applicant admits initially that about \$11,593 of the debts are his delinquent accounts. However, he gave no reason for the delinquent accounts. In addition, he provided no information or documentation that he is not liable for the accounts. He states that he has not paid any accounts. The record does not show any unemployment for Applicant.

Applicant responded to the FORM by stating that he transported military loads to multiple bases in the lower forty-eight states with a previous employer. He also stated that he hauled currency for the United States Mint for another company in his 20 years as a professional driver. He added that he has a TWIC card and a Hazardous Waste Materials endorsement on his commercial driver's license.

Applicant further explained that as for the credit issues, they have no bearing on his professional career. He emphasized that the debt is marital debt and he needs to proceed through the divorce process to have the debts split between he and his wife. He made reference to the medical accounts that belong to his wife and a debt of \$2,572 that is the balance on a repossessed car that is a joint responsibility. He believes that he really is liable for half of about \$10,307. His reasoning is that the medical debts, which he subtracts from the total amount of debts, and then the fact that his wife is liable for half the marital debts, he is left with about half of \$10,307. He states that he should not be punished for such a small debt. (Response to FORM)

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 U.S. 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.

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 sensitive information must be

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).

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).

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 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant incurred delinquent debt in the amount of \$13,921. He claims that it is marital debt and he is only responsible for \$10,307 by his calculations. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) 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 difficulty make it difficult to conclude that it occurred "so long ago." Applicant's debts remain unpaid. He noted that he plans to settle his delinquent debts when his divorce is final. He did not provide any documentation as to when the divorce would be final, nor did he submit any evidence that he is not liable for all the debts. 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) does not apply.

Financial Considerations Mitigating Condition (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 provided no reasons that would qualify him for this mitigating conditions. He has been gainfully employed. He has no plan, other than he is settling the debts when his divorce is final. I cannot find that he acted responsibly.

⁷ *Id.*

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. There is no information in the record that he has addressed any delinquent debts. There is no information to show that he has obtained recent financial counseling. FC MC AG ¶ 20(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) 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 an 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. 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 a 44-year-old man who is separated and has children. He has been employed as a professional driver for more than 20 years. He currently holds a TWIC card.

Applicant provided no explanation other than his marriage circumstances for his delinquent debts. He states that they are marital debts and he plans to settle his debts when his divorce is final. A promise to pay in the future is not sufficient. He also believes that the small amount of debt should have no bearing on his security clearance. He does not have a plan in place to pay the debts. He has not provided mitigation for the financial considerations security concerns.

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-m: 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 security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge