



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 14-02063 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: *Pro se*

08/12/2015

Decision

LYNCH, Noreen A, Administrative Judge:

On August 8, 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 August 4, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated May 20, 2015.¹ Applicant received the FORM on June 16, 2015. Applicant submitted information in response to the FORM, which was marked and admitted into the record as AX A.

¹The Government submitted eight items for the record.

Based on a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations), and provided explanations.

Applicant is a 33-year-old employee of a defense contractor. He graduated from high school in 2000 and attended a technical college. He is married and has children. He has worked for his current employer since 2013. (Item 4) This is his first application for a security clearance.

The SOR alleges that Applicant has 23 delinquent debts totaling approximately \$29,864. These debts included collection accounts, medical accounts, and delinquent student loans. (Item 1).

Applicant attributes his delinquent debts to a loss of his job and to a DUI conviction, medical expenses, and poor management of money. He states that he has taken money management courses and has a fresh start. He knows this is a one-time occurrence and has put systems in place to assure that this does not occur again. (Item 2) He received financial counseling as a part of the bankruptcy process.

Applicant has a lengthy history of financial problems. In 2008, he had a judgment filed against him for \$91, which was unresolved for years. In May 2014, he filed a petition for Chapter 7 Bankruptcy. The debts were discharged in September 2014. (Items 7 and 8) The petition noted assets of \$20,425 and liabilities of \$52,317. Of the listed debts in the SOR, 19 were included in the Chapter 7 bankruptcy.

The record does not reflect any payments that Applicant made on delinquent accounts before the bankruptcy. There is also no evidence of settlement agreements or payment plans post-bankruptcy.

As to Applicant's unemployment, it was the direct result of a September 2012 DUI and failure to report the incident to his employer in a timely fashion. He did disclose all information concerning the DUI and his delinquent debts in his 2013 security clearance application. (Item 4) The newest credit report shows post-bankruptcy delinquent debts which include student loans.

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

The United States 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 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

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).

⁷ *Id.*

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 debts over a period of years in the amount of approximately \$29,864. He filed a petition for bankruptcy, which was discharged in September 2014. Consequently, Financial Considerations Disqualifying Condition (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.

Applicant has not provided any evidence to mitigate the current security concern under Guideline F. Although Applicant utilized a legal means to resolve his delinquent debts in 2014, he still has unresolved delinquent debts. He did not provide information on any payments or plans to address these remaining accounts. Consequently, Financial Considerations Mitigating Condition (FCMC) 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. As noted, Applicant answered that he made poor decisions concerning his money management. Although he experienced unemployment in 2012, the DUI that caused the termination was not something beyond his control. He had debts before the unemployment that were not resolved for many years. There is no evidence that he acted reasonably in addressing his past-due debts under the circumstances until filing for bankruptcy. He did not submit documentary evidence showing responsible action in

addressing the student loans and other debts that remained after the bankruptcy. This mitigating condition does not apply.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant receives partial credit due to his filing of a petition for bankruptcy. Applicant received financial counseling as part of the process of bankruptcy. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is 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 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 33-years old. He has had a pattern of financial difficulties for many years. He is married and has children. He is currently employed.

Applicant filed for a Chapter 7 bankruptcy in 2014. This is a legitimate means to resolve debts. However, the record does not provide any information concerning debts not included in the bankruptcy. He has not demonstrated a pattern of responsibility for his debts. He has not submitted sufficient evidence to mitigate the financial considerations security concerns.

Applicant answered the FORM with a narrative that explained his recent efforts to address accounts. He states that he is trying to rebuild his credit. He noted that he is paying his student loans, but the document does not relate to the student loans. He apologizes for the DUI and notes that this was a one-time mistake. I have doubts about his judgment and reliability based on the record. Any doubts must be resolved in favor of the government.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge