



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-02067

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

12/31/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On March 4, 2015, 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 December 1, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated July 22, 2015.¹ Applicant received the FORM on August 4, 2015. Applicant did not submit a response to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

¹The Government submitted six items for the record.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations (1.a through 1.f) under Guideline F. He also provided explanations.

Applicant is 34 years old. He has never married and has one child. He obtained his GED in 2010. (Item 4) Since 2013, Applicant has been employed with his current employer. He completed an application for a security clearance on October 9, 2013.

Financial

The SOR alleges failure to file state tax returns for tax years 2011 and 2012, and five collection accounts totaling approximately \$4,466. (Item 5 and 6) In his security clearance application Applicant listed his failure to file the tax returns, but he gave no specific reason. He noted that no payment had been made for the tax. (Item 3)

As to SOR 1.a, Applicant attached an April 2014 invoice from a tax group for \$51. However, this document does not reflect that he filed his income tax returns for the years in question. The document does not provide proof of the state tax filing.

Applicant attributes the alleged debt in SOR 1.b for \$3,184, which occurred in 2007, to a lay-off from his job. He did not have the funds to pay the account, and he was evicted from his home. Applicant was unemployed from October 2007 to May 2008. While he was looking for a job, he was supported by his mother. (Item 4) He stated in his 2013 subject interview that he never paid the account, but he believes that it has been removed from his credit report and that he is not responsible for the account. (Item 4)

As to the remaining collection accounts listed in SOR 1.c to SOR 1.f, Applicant admitted that he was delinquent on the accounts. In his 2013 interview, he stated that he would research the accounts so that he could pay them. He provided no evidence of any payment plans or payments. He noted that he intends to pay his delinquent accounts. The record does not provide any information on 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 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 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.

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.*

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 approximately \$4,466 and he did not file his state tax returns for tax years 2011 and 2012. His admissions and credit reports confirm the delinquent debts. 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 AG ¶ 19(g) (failure to file federal or state tax returns as required by law) 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 provided no information or documentation that he has made any payments on the debts or filed the tax returns. 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 was unemployed from October 2007 to May 2008. This may have caused the delinquent debts, but he has been employed with his current employer since 2013. He stated that there was no particular reason that he did not file his state tax returns. He has not provided any evidence of payments made to any accounts. He intends to pay his delinquent debts, but he has not shown any efforts to repay by submitting documentation. He has not acted responsibly under the circumstances.

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 evidence in the record to support this mitigating condition. 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 34-year-old man who is single and has one child. He has been employed with his current employer since 2013. He was unemployed for a period of time. He gave no reason for not filing his state income tax returns. He stated that he intends to pay his delinquent debts. However, a promise to pay in the future is not sufficient for mitigation. He provided an invoice from a tax group which did not show if he filed his tax returns for the years in question. He did not respond to the FORM to supplement the record. Applicant did not provide sufficient evidence to mitigate the financial considerations security concerns. He has not 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-f:	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