



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



In the matter of:)	
)	
)	ISCR Case No. 14-02628
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

February 24, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is indebted to nine creditors on delinquent accounts totaling \$96,297. He demonstrated little effort to resolve his delinquencies. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on December 17, 2013. On August 18, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on September 19, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on December 2, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on December 11, 2014, and I convened the hearing, as scheduled, on January 12, 2015. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 4, which were admitted without objection. Applicant offered Applicant Exhibits (AE) A and B, which were admitted without objection. Applicant testified on his own behalf. I granted Applicant's request to leave the record open until January 22, 2015, for submission of documentary evidence. DOHA received the transcript of the hearing (Tr.) on January 20, 2015. Applicant timely submitted AE C through G, which were admitted without objection and the record closed.

Findings of Fact

Applicant is a 41-year-old employee of a defense contractor, where he has worked since 2007. He was naturalized as a U.S. citizen in 2002. He is married, with one minor child. He was a civilian employee working for the Air Force from 2002 to 2007. He has held a security clearance since 2002. (GE 1; Tr. 24, 31-33.)

In his response to the SOR, Applicant admitted all of the allegations concerning delinquent debts set forth in SOR ¶¶ 1.a through 1.i. (Answer.) Applicant's admissions are incorporated in the following findings.

Applicant's credit bureau reports substantiate the existence of all of the delinquent debts alleged in the SOR. His documented delinquencies comprise 9 debts totaling \$96,297, which he failed to pay over the past six years. They include a personal loan and eight delinquent credit cards. He did not document any payment toward, or basis to dispute, any of these debts. He claimed that "all the creditors on the record that are delinquent were charged off." (AR; GE 2; GE 3; GE 4; Tr. 56, 66-67.)

Applicant attributed his delinquent debts to spending beyond his means, a failed real estate investment partnership, and his wife's unemployment. He admitted, "We thought we were rich," and "had spending habit trouble." (Tr. 27, 65.) Applicant purchased his residence in 2004. In 2006 Applicant invested in two homes through a partnership with his wife's sisters. All three properties were short sold between 2007 and 2010. Applicant took responsibility for his decision to default on his home mortgage and maximize his credit cards to their limits in an effort to make payments on his real estate investments.¹ (Tr. 25-30, 35-49.)

In May 2014 Applicant contacted a credit repair service to help him address his SOR-listed debts. In November 2014 he paid the credit repair service \$500 to begin utilizing their services. He anticipates that the service will help him settle each debt or remove it from his credit report within the next six months. He failed to present any documentation to show that the credit repair service has taken any concrete actions on

¹Applicant's defaulted mortgage is not alleged on the SOR. It was resolved through short sale.

his debts, despite their proposal to do so. Applicant testified he has not had any financial counseling. (AE A; AE B; AE C; AE D; Tr. 58-62.)

Applicant has received a number of workplace honors and awards, including: three special recognition awards; three spot awards; and an external award. (AE F.) He provided a list of the security courses he has completed. (AE E.) He submitted no character references describing his judgment, trustworthiness, integrity, or reliability.

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 (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 the applicant may deliberately or inadvertently fail to protect or 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant accrued \$96,297 in delinquent debts over the past six years, and demonstrated neither the means nor a reasonable effort to resolve them. This evidence raised security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's nine SOR-listed delinquent debts are recent and ongoing, without indication that the circumstances under which they arose have changed. He therefore failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). While his wife's unemployment could be considered a condition beyond his control, his debts were largely due to overspending and poor financial decision making. He has been fully employed during the period he incurred substantial delinquent debts, and has not taken steps to show he acted responsibly under the circumstances.

Applicant did not undergo financial counseling. He neither documented any substantially effective effort to repay or otherwise resolve any of the SOR-listed delinquent debts, nor asserted a legitimate basis to dispute their validity. He recently contacted a credit repair company to assist him in negotiating and removing his debts from his credit report, however, his recent actions do little to demonstrate a good-faith commitment to resolve the delinquencies. These facts preclude significant mitigation under MC 20(c), (d), or (e).

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant incurred substantial delinquent indebtedness on a personal loan and eight credit cards that he has made no effort to repay, despite his recent hiring of a credit repair company. These debts remain outstanding, creating the ongoing potential for pressure and duress. The evidence does not support a finding that continuation or recurrence are unlikely, or that behavioral changes demonstrate rehabilitation. He is a mature and experienced individual who is accountable for his choices and financial irresponsibility. Overall, the record evidence creates ongoing doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

JENNIFER I. GOLDSTEIN
Administrative Judge