



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



In the matter of:

ISCR Case No. 14-04299

Applicant for Security Clearance

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

September 21, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 36-year-old employee of a defense contractor. He has a history of financial indebtedness demonstrated by ten debts that remain unresolved. He failed to provide proof he filed his 2011 Federal and state income tax returns. Eligibility for access to classified information is denied.

Statement of the Case

On February 21, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 (AG) effective September 1, 2006.

Applicant answered the SOR (Answer), and requested a hearing before an administrative judge in an undated submission. The case was assigned to me on July 6,

2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 8, 2015, scheduling the hearing for August 7, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered Exhibits (AE) A through E, which were admitted without objection. Applicant testified on his own behalf. The record was left open for receipt of additional documents. On August 28, 2015, Applicant presented AE F through H. Department Counsel had no objections to AE F through AE H and they were admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on August 17, 2015.

Findings of Fact

Applicant is a 36-year-old employee of a defense contractor. He served on active duty in the Navy for 8 years from 1998 to 2006. He has worked for a government contractor since April 2014. He is divorced. He has one minor son and is close to his former step-daughter. (Tr. 19, 23-26.)

As listed in the SOR, Applicant was alleged to be delinquent on 15 debts in the total amount of \$37,829. His debts are identified in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 2; GE 3; GE 4; GE 5; GE 6.)

Applicant attributed his debts to his unemployment and his divorce. He was unemployed from December 2006 to February 2007. He worked several temporary jobs between 2007 and 2008. In July 2008 he was hired by another government contractor. He was with that government contractor until 2013, when he was laid off. He was unemployed from July 2013 to April 2014, when he was hired into his present position. He was divorced in 2008. (GE 1.)

Applicant failed to file his Federal and state income tax return in 2011, as alleged in SOR ¶¶ 1.a and 1.b. He admitted that he was negligent in failing to file these tax returns. Although it was not alleged, he also failed to file his 2012 Federal and state income tax returns. He testified that he filed both his 2011 and 2012 Federal and state income tax returns in 2015. A statement from his state tax board shows he has a \$0 balance for the 2014 tax year, but did not show whether he filed his state tax return 2011 or 2012. He presented a copy of his Federal tax return for 2011, but it does not show whether it was actually filed with the Internal Revenue Service. (AE C; AE D; AE F; Tr. 21-24.)

Applicant is indebted on a medical account in the approximate amount of \$1,179, as alleged in SOR ¶ 1.c. Applicant testified that he tried to contact this creditor, but was unable to reach anyone at the collection agency. He did not attempt to contact the hospital where he received treatment. (Tr. 25-26.)

Applicant is indebted on a medical account in the approximate amount of \$268, as alleged in SOR ¶ 1.d. He testified that he does not know what this debt is for. He failed to contact the creditor. (Tr. 26.)

Applicant was indebted on a medical account in the approximate amount of \$49, as alleged in SOR ¶ 1.e. Applicant presented documentation that this debt has been resolved. (AE E; Tr. 26-28.)

Applicant is indebted on a collection account in the approximate amount of \$778, as alleged in SOR ¶ 1.f. He testified that this debt was for cable television equipment. However, he believed he returned the equipment and was disputing the debt. He failed to present any documentation of this dispute. (Tr. 29-30.)

Applicant is indebted on a medical account in the approximate amount of \$720, as alleged in SOR ¶ 1.g. He has not contacted this creditor. This debt is unresolved. (Tr. 30-31.)

Applicant is indebted on a medical account in the approximate amount of \$80, as alleged in SOR ¶ 1.h. He testified that this debt is a joint obligation with his ex-wife. It remains unresolved. (Tr. 31.)

Applicant is indebted on a charged-off account in the approximate amount of \$425, as alleged in SOR ¶ 1.i. Applicant contacted this creditor to arrange payments, but was informed the creditor would only accept payment in full. He does not have the money to pay the full balance. It remains delinquent. (Tr. 33-34.)

Applicant is indebted on a collection account in the approximate amount of \$850, as alleged in SOR ¶ 1.j. Applicant has not taken action on this debt. It remains delinquent. (Tr. 33-36.)

Applicant was delinquent on his \$173,000 home mortgage in the approximate amount of \$28,888, as alleged in SOR ¶ 1.k. This debt was for the primary mortgage on his former residence. He purchased this house for his family shortly before his marital separation. After the separation, Applicant could not afford the mortgage payments. He attempted to refinance the home and when that failed he tried to short-sell the home. Neither effort was successful. The home was foreclosed upon in April 2011. Applicant contacted the creditor to arrange payments on any residual debt and was told that the debt was cancelled after the foreclosure. He was awaiting a Form 1099-C at the time the record closed. (AE A; AE B; AE F; Tr. 36-40.)

Applicant is indebted on a collection account in the approximate amount of \$967, as alleged in SOR ¶ 1.l. Applicant has not taken action on this debt. It remains delinquent. (Tr. 33-34, 41.)

Applicant is indebted on a collection account in the approximate amount of \$123, as alleged in SOR ¶ 1.m. Applicant has not taken action on this debt. It remains delinquent. (Tr. 33-34, 41-42.)

Applicant was indebted on a collection account in the approximate amount of \$55, as alleged in SOR ¶ 1.n. Applicant presented documentation that this debt has been resolved. (AE E; Tr. 34, 43.)

Applicant is indebted on a medical account in the approximate amount of \$281, as alleged in SOR ¶ 1.o. Applicant has not taken action on this debt. It remains delinquent. (Tr. 43.)

Applicant is indebted on a collection account in the approximate amount of \$214, as alleged in SOR ¶ 1.p. Applicant testified he has a payment agreement to make monthly payments of \$50 for five months to repay this debt. He presented documentation showing one payment of \$50 on August 1, 2015, under this agreement. Applicant is resolving this debt. (AE E; Tr. 32-33, 43-44.)

Applicant is indebted on a medical account in the approximate amount of \$2,952, as alleged in SOR ¶ 1.q. Applicant testified that he has a payment agreement with this creditor. He pays \$100 per month on this debt. His account statement shows the balance has been reduced to \$2,726. Applicant is resolving this debt. (AE E; Tr. 32-33, 44.)

As of August 12, 2015, Applicant had only \$4.73 available in his checking account. He presented no budget or formal plan to resolve his remaining debts. There is no evidence he has completed financial counseling. (AE H.)

Applicant presented one letter of support from a former manager. The letter indicated that Applicant shows “the highest level of ethics and integrity while performing his duties.” (AE G.)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, 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, administrative judges apply the guidelines 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(c), the entire process is a conscientious scrutiny 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters 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.

Section 7 of EO 10865 provides that adverse 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

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

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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

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

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has a history of financial indebtedness demonstrated by the credit reports in evidence that substantiate all of the allegations. He has been unable to address the majority of his delinquencies because he does not have the funds to do so. Additionally, he failed to file his Federal and state income tax returns in 2011. The evidence raises all of the above security concerns, 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 financial problems are ongoing. He has ten unresolved delinquent accounts. He also failed to provide documentation that substantiates his claim he filed his 2011 Federal and state income tax returns. His bank statement showed he has less than \$5 in his checking account. He has not demonstrated that future financial problems are unlikely. AG ¶ 20(a) has not been established.

Applicant blamed his financial problems on his unemployment and divorce. However, he also accepted responsibility for poor decisions he made, like failing to file his 2011 and 2012 Federal and state income tax returns. He failed to act responsibly to address his debts or tax returns in a timely manner. AG ¶ 20(b) has not been fully established.

Applicant failed to produce documentation to show he received counseling for his financial problems. There are no clear indications that his financial problems are being resolved or are under control. Applicant has resolved or is resolving five of his debts, however, ten other debts remain unaddressed. AG ¶ 20(c) has not been fully established.

Applicant testified that he disputed one debt because he returned the equipment for which he was being billed. However, he failed to take any formal steps or otherwise document his dispute on that account. AG ¶ 20(e) has not been established.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is respected by his former manager and performs well at work. He honorably served in the Navy for eight years. However, he lacks the resources to address his debts. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations security concerns. I conclude the whole-person concept against Applicant.

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:	FOR APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For 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