



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



In the matter of:)
)
) ISCR Case: 14-04556
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

June 2, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant accumulated seven delinquent debts totaling \$22,431. He also had a Chapter 13 bankruptcy filing dismissed in 2008. He has not resolved any of his delinquencies. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On January 28, 2014, Applicant submitted a security clearance application (e-QIP). On October 10, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), 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* (AG), effective within the DOD after September 1, 2006.

Applicant responded to the SOR (Answer) on November 5, 2014, and requested that his case be decided by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the written record without a hearing. (Item 4.) Department Counsel submitted the Government's written case on January 9, 2015. A complete copy of the File of Relevant Material (FORM), containing ten Items, was received by Applicant on January 30, 2015. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. He provided additional information in response to the FORM within the 30-day period, marked as Applicant's Exhibit (AE) A. Department Counsel had no objections to AE A, and it was admitted into the record. DOHA assigned the case to me on April 27, 2015.

Findings of Fact

Applicant is 56 years old. He has been employed with a Government contractor since January 2014. He is married and has four children, ages 37, 31, 20, and 15. He has a high school diploma. (Answer; Item 5.)

The SOR alleges Applicant owes approximately \$22,431 in delinquent debt to seven creditors. He filed for Chapter 13 bankruptcy in 2007, but later had it dismissed in 2008. In his Answer, Applicant admitted SOR ¶¶ 1.a, 1.b, 1.d, 1.e, and 1.f. Applicant denied SOR ¶¶ 1.c, 1.g, and 1.h. (Item 4.) His debts are documented in the record credit reports dated February 21, 2014 and September 11, 2014. (Item 6; Item 7.) His bankruptcy dismissal is documented in public records entered into evidence. (Item 9.) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant attributed the delinquent debts to his unemployment and underemployment from 2003 to January 2014. (Item 4.) He was unemployed from January 2004 to March 2005. He then worked a series of part-time jobs, until he was hired into his current job in January 2014. (Item 4; Item 5.)

Applicant filed for Chapter 13 bankruptcy on November 26, 2007. On February 27, 2008, his case was dismissed due to his failure to file a feasible plan, an income and/or budget statement, and make all required pre-confirmation payments to the Trustee. Applicant indicated that he intentionally withdrew the Chapter 13 bankruptcy because "it was the wrong thing to do." (Item 4; Item 8.)

Applicant is alleged to be indebted on a federal tax lien entered against him in the approximate amount of \$15,371, as listed in SOR ¶ 1.b. This tax lien was filed in approximately March 2008. Applicant indicated in AE A that he has submitted a proposed payment plan to begin to satisfy this debt; however, he failed to produce verification of that proposal or its status. This debt is still outstanding. (Item AE A.)

Applicant is alleged to be indebted on a judgment entered against him in 2007 in the approximate amount of \$1,119, as listed in SOR ¶ 1.c. Applicant claimed that “this bill was paid five years ago and is about to be removed from my credit report by the credit bureau.” (Item 4.) However, he failed to submit documentation to substantiate his claim. It was listed on his February 21, 2014 credit report as having been verified by two credit reporting agencies. This debt is unresolved. (Item 6.)

Applicant is alleged to be indebted on a medical debt in the approximate amount of \$155, as listed in SOR ¶ 1.d. In his Answer, Applicant stated, “This bill is active and is about to be paid.” However, he did not produce any documentation to show that it has been resolved. It has been past due since January 2013. (Item 4; Item 6.)

Applicant is alleged to be indebted on a medical debt in the approximate amount of \$491, as listed in SOR ¶ 1.e. In his Answer, Applicant stated, “This bill is about to be paid and before now I did not have adequate income.” However, he did not produce documentation to show that it has been resolved. This debt has been delinquent since May 2012. (Item 4; Item 6.)

Applicant is alleged to be indebted on a student loan in the approximate amount of \$4,671, as listed in SOR ¶ 1.f. In his November 5, 2014 Answer, he indicated he was “Re-negotiating monthly payment amount.” However, in AE A, submitted after April 30, 2015, Applicant stated he was still attempting to negotiate a payment plan on this debt. This debt is unresolved. (Item 4; AE A.)

Applicant is alleged to be indebted on a charged-off credit card in the approximate amount of \$418, as listed in SOR ¶ 1.g. Applicant denied this debt and indicated he had asked the credit reporting agencies to remove it from his credit report. He failed to present documentation to substantiate the basis of the dispute or evidence of actions he has taken to resolve the issues related to this debt. This debt appears on his most recent credit report. It is unresolved. (Item 4; Item 7.)

Applicant is alleged to be indebted on a collection account in the approximate amount of \$206, as listed in SOR ¶ 1.h. Applicant denied this debt and indicated he had asked the credit reporting agencies to remove it from his credit report. He failed to present documentation to substantiate the basis of the dispute or evidence of actions he has taken to resolve the debt. This debt appears on his most recent credit report. It is unresolved. (Item 4; Item 7.)

Applicant and his wife have attended weekly financial literacy sessions sponsored by their church for the past six months. (Item 4.) Applicant failed to submit a budget or income statement. He submitted no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to protected information. He provided 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. 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, 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 relating to 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.

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

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

Applicant accumulated \$22,431 in delinquent debt that he was unable or unwilling to satisfy. He has had delinquent debt that he could not satisfy since at least 2007, when he filed the Chapter 13 bankruptcy, which was dismissed in 2008. The evidence raises security concerns under both conditions, 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 has incurred substantial delinquent debts, totaling over \$22,000, which remain unpaid to date. He offered no evidence from which to establish a track record of debt resolution. While his periods of unemployment and under-employment may have been conditions beyond his control, he failed to show that he acted responsibly after finding full-time employment in 2014. Similarly, he failed to show that financial counseling is helping him bring his finances under control, as he has not resolved even one of the alleged delinquencies. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning an alleged debt, and Applicant failed to provide such evidence. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions.

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.

According to 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 is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His SOR-listed delinquent debts arose over the past seven years and remain unresolved despite his employment during the period involved. He offered insufficient evidence of financial rehabilitation, better judgment, or

responsible conduct in other areas of his life to offset resulting security concerns. The potential for pressure, coercion, and duress from his financial situation remains undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

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

Subparagraphs 1.a through 1.h: 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