



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04656

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

06/27/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On December 2, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).¹ On February 26, 2015, Applicant responded to the SOR, admitting the 13 allegations with comments. He also requested a determination based on the written record. On July 19, 2015, the Government issued a File of Relevant Material (FORM) with four attachments. Applicant timely responded to the FORM with additional material. The case was assigned to me on October 9, 2015. Based on my review of the case file and submissions, I find Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 33-year-old high school graduate who has been employed as a shipfitter by the same defense contractor since March 2014. He is single with two minor children. Applicant has not served in the military and has no prior government service.

¹ The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

He experienced periods of unemployment from January 2014 to March 2014, due to a lack of work; February 2013 to May 2013, after being told things were not working out with his employment; and February 2011 to September 2011, due to lack of work. During the interim periods, he worked as a heating, ventilating, and air conditioning (HVAC) installer. Otherwise, he has been continuously employed since at least August 2006, after a seven month period of unemployment caused by a lay off. He has no criminal record or past issues with drugs or alcohol. In completing his March 2014 security clearance application (SCA), Applicant disclosed that he had financial issues.

At issue are 12 accounts representing approximately \$9,700 in delinquent debt, including an adverse 2007 judgment for \$945 and \$4,208 for past-due child support. The rest appear to be consumer, medical, or utility accounts. Applicant admits all related allegations. In his SOR Response, Applicant noted that the child support arrearage at SOR allegation 1.b was being paid through a garnishment to the appropriate child support department and the rest were currently being consolidated by a law firm for repayment starting after January 1, 2015.

In his FORM Response, Applicant made additional comment with attachments. He principally noted that the information comprising the FORM was outdated. He further noted the following regarding the December 2014 SOR allegations:

1.a – Applicant admitted responsibility for the \$945 adverse judgment alleged, noting that he had no information regarding the alleged debt and stating that it is no longer on his credit report.

1.b – Applicant provided information that he is no longer delinquent on his child support payments and the balance is now zero. (FORM Response attachment, credit report excerpt at 1)

1.c - Applicant admitted responsibility for the \$622 collection account alleged, noting that he had no information regarding the alleged debt and stating that it is no longer on his credit report.

1.d - Applicant admitted responsibility for the \$468 collection account alleged, noting that he had no information regarding the alleged debt and stating that it is no longer on his credit report.

1.e – Applicant admitted responsibility for the charged off \$388 referenced, but wrote that it is now part of a repayment plan, under which he has been making monthly \$50.70 payments toward the debt, leaving a \$287 balance. (FORM Response attachment, credit report excerpt at 2; receipts reflecting two payments for \$50 each)

1.f - Applicant admitted responsibility for the \$1,077 collection account alleged, noting that he had no information regarding the alleged debt and stating that it is no longer on his credit report.

1.g - [The SOR did not include a subpart 1.g]

1.h - Applicant admitted responsibility for the \$776 collection account alleged, noting that he had no information regarding the alleged debt and stating that it is no longer on his credit report.

1.i – Applicant admitted responsibility for the \$380 collection account alleged, noting that he had no information regarding the alleged debt and stating that it is no longer on his credit report.

1.j – Applicant admitted responsibility for the \$380 collection account alleged, noting that he had no information regarding the alleged debt and stating that it is no longer on his credit report.

1.k - Applicant admitted responsibility for the \$248 collection account alleged, noting that he had no information regarding the alleged debt and stating that it is no longer on his credit report.

1.l - Applicant admitted responsibility for the \$148 medical collection account alleged, noting that he had no information regarding the alleged debt and stating that it is no longer on his credit report.

1.m – Applicant admitted responsibility for this \$128 medical debt, showing it has been paid and poised to be deleted from his credit report. (FORM Response, attachment, creditor letter of August 21, 2015; TransUnion letter of August 28, 2015)

Applicant also showed that he is in timely repayment on debts not noted in the SOR, such as his student loans and a new account now appearing in his most recent credit report. (FORM Response narrative) There is also documentary evidence of 22 timely payments on an account with a principal balance of approximately \$11,000, but there is no apparent link between it and the accounts at issue in the SOR. (FORM Response, attachment, statement of August 21, 2015)

In responding to the SOR and the FORM, Applicant provided scant evidence regarding his current income, expenses, and other factors reflecting his present financial situation or his ability to address the debts at issue, regardless of whether they are currently reflected on his credit report. There is no evidence indicating whether he has received financial counseling or has formally disputed any of the debts at issue

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 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 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 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, 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 and has the ultimate burden of persuasion to obtain a favorable security 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant acquired approximately \$9,700 in delinquent debts. This is sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

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;

AG ¶ 20(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;

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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

The delinquent debts at issue are multiple in number and largely unaddressed. Little is known of his present financial situation, so it cannot be determined whether another period of delinquent debt acquisition is likely to recur. Moreover, while Applicant did experience periods of unemployment in the past decade, he failed to provide any narrative as to what reasonable efforts he took, if any, to contain his debt or to address the debts he had accumulated. There is no documentary evidence reflecting that Applicant has received financial counseling.

Furthermore, while Applicant showed some progress and regular payments on accounts not at issue in the SOR, he only presented documentary evidence showing that he is no longer past due on the debt reflected at 1.b, has reduced the debt at 1.e by approximately \$100, and paid the \$128 balance noted at allegation 1.m. The remaining nine of the dozen delinquent debts at issue remain virtually unaddressed, undisputed, or uninvestigated. With no clear strategy yet in place and with scant progress made on the delinquent accounts at issue, none of the mitigating conditions 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 the applicant's conduct and all relevant circumstances. The administrative judge should consider the

adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c) sets forth the need to utilize a whole-person evaluation.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis. Applicant is a 33-year-old shipfitter who is a single father of two children and a high school graduate. He has worked for the same employer since March 2014. Applicant experienced periods of unemployment from January 2014 to March 2014, February 2013 to May 2013, and February 2011 to September 2011, working as a HVAC installer in between those periods of time. Otherwise, he has been continuously employed for the past decade.

Applicant has acquired a dozen delinquent debts amounting to almost \$10,000. While it may be assumed some or all of that debt may be related to his periods of unemployment, Applicant offered scant information as to his current financial situation and regarding his approach to addressing the dozen delinquent obligations at issue. Many of the debts are no longer reflected on Applicant's credit report, and there is no indication that he has tried to investigate further into their status or dispute their inclusion on his credit report. While he provided admirable examples of progress on some debts not at issue, he only demonstrated notable progress on three of the delinquent debts reflected on his SOR, amounting to less than \$1,200. While this process does not require an applicant to satisfy or address all debts at issue in an SOR, it does expect that Applicant demonstrate that he has developed a workable plan for addressing those obligations, and documentary evidence indicating that it has been successfully implemented. At this point, Applicant has not met this burden. Consequently, financial considerations security concerns remain unmitigated.

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

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Not applicable
Subparagraphs 1.h-1.i:	Against Applicant
Subparagraph 1.m:	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge