



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04870

Appearances

For Government: Gina L. Marine, Esq., Department Counsel

For Applicant: *Pro se*

09/02/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On November 4, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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 effective within the DOD for SORs issued after September 1, 2006.

On December 19, 2014, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. On June 17, 2015, Department Counsel submitted the Government's file of relevant material (FORM). The

FORM was mailed to Applicant, and it was received on July 6, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object and the documents were admitted into evidence. In response to the FORM, Applicant submitted additional information, which was admitted into evidence without objection. The case was assigned to me on August 14, 2015.

Findings of Fact

Applicant admitted all of the SOR allegations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 40 years old. He served in the military for four years and was honorably discharged in 1999. He then served in the active reserve from July 2000 to January 2001. He reenlisted and was on active duty from January 2001 to September 2007, when he was discharged under other than honorable conditions. He listed the reason for his discharge as "failed urinalysis test."¹ Applicant married in 1985 and divorced in 2000. Applicant remarried in 2005 and divorced in 2008. He has a 15-year-old daughter. He has been employed with his present employer, a federal contractor, since 2008.²

Applicant filed Chapter 7 bankruptcy in 2004 and had debts discharged in 2005. In his background interview with a government investigator in October 2013, he attributed the bankruptcy to being young and irresponsible and using too many credit cards and loans.³

Applicant has 45 unresolved debts totaling approximately \$30,722. Of those, 35 are medical debts ranging from \$30 to \$614. The debts are supported by credit reports from June 2015, July 2014, and September 2013.⁴

Applicant attributed his financial problems to not having medical insurance to cover his and his family's medical expenses. In addition, he helps support his ex-wife who does not work. He indicated that he gives her up to \$1,000 a month and pays \$470 for child support, which then leaves him with no money to pay his bills. During his background interview, he indicated that he would begin to follow up on some of the delinquent bills and see if he could pay some or possibly file bankruptcy again. He planned to pay some of the medical bills with money his ex-wife expected to receive in a settlement from a car accident. He did not provide corroborating information to support

¹ Item 3.

² Items 3, 4, 5, 6, and 7.

³ Item 4.

⁴ Items 4, 5, 6, and 7.

his statements that he made an effort to pay any of the medical debts. No other information was provided regarding actions Applicant has taken to resolve any of the delinquent debts.⁵

In his security clearance application (SCA) signed in September 2013 and during his background interview, Applicant indicated that he owed state taxes for tax year 2000, and he was making \$50 monthly payments. He did not have enough money withheld from his income and was unable to pay the amount of tax owed. SOR ¶ 1.b (\$896) is a state tax lien filed in 2005 that remains unpaid. Applicant did not provide information of any action he has taken to resolve the debt.⁶

In his SCA, Applicant indicated he owed \$11,131 for a vehicle he purchased in 2010. (SOR ¶ 1.c - \$11,460). It was repossessed in 2011. He was waiting for the sale of the vehicle to resolve the debt. The bill remains unpaid.⁷

In his SCA, Applicant indicated he owed \$251 for an electric bill (SOR ¶ 1.bb) from 2013, and he was paying the full amount. That bill remains unpaid.⁸

The remaining debts in SOR ¶¶ 1.d (\$1,887); 1.e (\$1,735); 1.f (\$708); 1.g (\$666); 1.x (\$297); 1.ss (\$1,074) and 1.t (\$1,735) are consumer debts.⁹ In Applicant's answer to the SOR, he indicated he was going to start paying his delinquent debts and that some of the debts have been removed from new credit reports. Specifically he indicated he was going to make payment arrangements for the debts in SOR ¶¶ 1.x, a cable bill; 1.bb, an electric bill; and 1.tt, a bill to a bank. He did not provide corroborating information to show he has taken action on the debts.¹⁰

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 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

⁵ Item 4.

⁶ Items 3, 4, 5, 6, and 7.

⁷ Items 3, 4, 5, 6, and 7.

⁸ Items 3, 5, 6, and 7.

⁹ Items 4, 5, 6, and 7.

¹⁰ Items 2, 5, 6, and 7.

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, 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. 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, 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 as to obtaining 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. 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 that an applicant may deliberately or inadvertently fail to 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 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

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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 guideline notes several conditions that could raise security concerns. I have considered the following under AG ¶ 19:

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

Applicant had debts discharged in bankruptcy in 2005. He has since accumulated 45 delinquent debts totaling approximately \$30,722, including a state tax lien filed in 2005. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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; and
- (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.

After having his delinquent debts discharged in bankruptcy in 2005, Applicant again accumulated numerous debts that remain unresolved. Applicant failed to provide evidence of actions he has taken to resolve any of his delinquent debts. There is insufficient evidence to conclude his financial problems are unlikely to recur. His history

of not meeting his financial obligations and failure to address the delinquent debts cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his recent financial problems to not having medical insurance and supporting his ex-wife. He has been working full-time since 2008 with his present employer, but did not explain why he does not have medical insurance. These conditions may have been beyond his control. However, for the full application of AG ¶ 20(b), Applicant must show he acted responsibly under the circumstances. Applicant indicated on his SCA that he was paying his state tax lien through monthly installment payments. It remains delinquent. He also indicated that he would follow up on some of the debts and resolve them. He failed to provide evidence of actions he has taken to pay any of the delinquent debts, including ones that are less than \$50. He indicated in his SCA that he was paying his electric bill. It remains unresolved. AG ¶ 20(b) partially applies.

There is no evidence Applicant received financial counseling or made a good-faith effort to pay any of the creditors or otherwise resolve the alleged delinquent debts. There are not clear indications Applicant's financial problems are being resolved or are under control. Applicant did not dispute any of the alleged debts.

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 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.

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 40 years old. He had his debts discharged in bankruptcy in 2005. He has been steadily employed since 2008. He has 45 delinquent debts totaling more than \$30,000 that are unresolved. He failed to provide evidence of action he has taken to resolve his financial problems. Based on the evidence in record, his financial problems are likely to continue. 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 security concerns arising under Guideline F, financial considerations.

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
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Subparagraphs 1.a-1.tt:	Against Applicant
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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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge