



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



In the matter of:)
)
) ISCR Case No. 14-05782
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

07/16/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He is delinquent on six collection accounts and three charged-off accounts, which total approximately \$8,400. There is no showing of payments having been made on the debts. Applicant has failed to mitigate the financial considerations security concerns. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on January 7, 2015, the DoD issued a Statement of Reasons² (SOR) detailing security concerns. On

¹ 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.

² Procedurally it should be noted that the SOR references paragraphs 1.a through 1.k. However, there is no paragraph 1.j. listed in the SOR.

January 28, 2015, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated April 1, 2015. The FORM contained nine attachments (Items). On April 14, 2015, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. An undated response to the FORM was received from Applicant. DC did not object to the admission of the letter, which was marked and admitted as Applicant's Exhibit (Ex.) A. On May 26, 2015, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he admitted the nine accounts placed for collection or charged off. He also admitted having filed for Chapter 7 bankruptcy relief in October 2005. (Item 4) He stated:

All debts occurred (sic) during the recession in which I lost my job and only received (sic) unemployment. I am currently employed and I am in the process of trying to pay these debts off. (Item 4)

I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 37-year-old security guard who has worked for a defense contractor since June 2014 and seeks to obtain a security clearance. (Item 5) He was unemployed from November 2013 until June 2014. (Item 5) He was also unemployed from January 2011 through August 2011 and June 2007 through June 2009.

In Applicant's June 2014 Electronic Questionnaires for Investigations Processing (e-QIP), he indicated he had credit card debts that he needed to pay. He stated he was obligated on the debt and would be able to pay them if he gained decent employment. (Item 5) On his e-QIP he listed eight of the nine SOR debts. He did not list SOR 1.f, but did list a bank credit card not referenced in the SOR.

In October 2005, Applicant filed for Chapter 7 bankruptcy protection. (Item 6) His debts were discharged in January 2006. He had approximately \$14,000 in assets and had approximately \$25,000 in liabilities. His 2000 automobile had a fair market value of \$13,000 and a lien of \$11,000. The car represented the majority of his assets and forty-five percent of his liability in his bankruptcy. At the time of filing, his current monthly income was \$1,400 and his current monthly expenditures were \$1,600. (Item 6)

In August 2014, Applicant had a Personal Subject Interview (PSI) during which he was asked about his delinquent debts. (Item 9) At the time of his PSI he stated he had a "lot of debt" that "he must get rid of." (Item 9) He said he would start paying his debts the following month. (Item 9) He stated he was making his monthly car payment and payments on two credit cards in a timely manner. (Item 9)

In response to the FORM, Applicant stated he intends to pay all his creditors, but was unable to do so because of his earlier unemployment. (Ex. A) Additionally, he was going through a divorce. (Ex. A)

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 must be considered 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, past and present, favorable and unfavorable, in making a decision.

The protection of 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 applicant or proven by Department Counsel. . . ." The applicant 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. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage their finances to meet their financial obligations.

Applicant owes approximately \$8,400 for six charged-off accounts and three collection accounts. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

None of the mitigating factors for financial considerations extenuate the security concerns. Applicant's financial difficulties are both recent and multiple. He has been employed with his current employer for one year. In August 2014, he was made aware of the Government's concerns about his delinquent debt. At that time, he acknowledged his debts, knew that he had to address them, and planned to start making payments on his debts the following month. He has provided no documentation showing payment on any of his debts. Even the two smaller debts of less than \$450 each remain unpaid. He has not acted responsibly in addressing his debts. He provided no evidence he has received credit or financial counseling. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. He has not made a good-faith effort to satisfy his debts.

AG ¶ 20(a) does not apply because the delinquent debts remain unpaid, and because they remain unpaid, they are considered recent. There is nothing in the record supporting that conditions under which the debts were incurred were unusual. Applicant was asked about these obligations starting in August 2014 during his PSI. Given sufficient opportunity to address his financial delinquencies, Applicant has failed to act timely or responsibly under the circumstances. Failing to pay the debts casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. He has been unemployed in the past: November 2013 until June 2014, January 2011 through August 2011, and June 2007 through June 2009. These are factors beyond his control. However, he has been employed for a year and failed to show any payments on his delinquent debt. By failing to show any payments he has failed to show he has acted responsibly under the circumstances.

The mitigating condition listed in AG ¶ 20(c) does not apply. There has been no evidence Applicant has received financial counseling. Additionally, there is no clear showing that his financial obligations are being addressed. The mitigating condition listed in AG ¶ 20(d) does not apply because Applicant has failed to document payment on any of the delinquent accounts. The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has not disputed any of the delinquent debts. He admitted all of the debts.

I do not find Applicant's filing for bankruptcy almost 10 years ago to be of security significance. It is his current unpaid and delinquent accounts that are of concern. I find for him as to SOR 1.a.

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. The amount of debt is not large and being unemployed is a reasonable explanation as to why the debt was not timely paid. However, Applicant has failed to document any payment on his delinquent accounts. He has been aware of the Government's concern about his delinquent debts since his August 2014 PSI, which was reinforced in the January 2015 SOR. No delinquent debts have been paid and there is no documentation Applicant has recently contacted his creditors.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances and facts that would mitigate the financial considerations security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. He failed to provide such information, and by relying solely on his paragraphs of explanation in response to the SOR, he failed to mitigate the financial considerations security concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to

the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

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, Financial Considerations: AGAINST APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.k:	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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge