



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



In the matter of:

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) ISCR Case No. 14-06567
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Applicant for Security Clearance

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel

For Applicant: *Pro se*

02/29/2016

Decision

WHITE, David M., Administrative Judge:

Applicant started incurring more than \$11,000 in delinquent debts in late 2008, and made no effort to resolve them until recently filing for bankruptcy. He also filed for bankruptcy in 2004 to discharge over \$37,000 in debts that he owed when he last sought a clearance. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on May 22, 2014. On February 3, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on February 25, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 29, 2015. The case was assigned to me on July 19, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 21, 2015, and I convened the hearing, as scheduled, on August 11, 2015. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified on his own behalf and offered exhibits (AE) A through C, which were admitted without objection. I granted Applicant's request to leave the record open until August 25, 2015, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on August 17, 2015. Applicant did not submit any additional evidence during the time allotted, nor did he request additional time to do so, and the record closed as scheduled.

Findings of Fact

Applicant is a 46-year-old marine electrician who has worked for a defense contractor since July 2008. Immediately preceding that employment he was unemployed for four months, after having being terminated for improper watch-standing procedures by another defense contractor that had employed him as a security guard since 2003. He is married, with two children ages 17 and 13. He is a high school graduate, and was on active duty in the Navy from 1988 to 1993. He was honorably discharged at paygrade E-4, then served in the Navy Reserve until March 1996. He held a security clearance throughout most of his military service and subsequent employment by defense contractors. (GE 1; Tr. 6-8, 38-39.)

In his response to the SOR, Applicant admitted all of the allegations concerning his financial history. (AR.) Applicant's admissions are incorporated in the following findings.

Applicant filed for Chapter 7 bankruptcy relief in August 2004, after being questioned by an investigator from the Office of Personnel Management (OPM) in May 2004 about his financial delinquencies in connection with his previous application for a security clearance. On November 19, 2004, the Bankruptcy Court discharged \$37,768 of his unsecured debts owed to about 50 creditors and collection agencies. He told the OPM investigator that his financial problems stemmed from being young and not very smart with his finances and spending more than he had. He said that after his bankruptcy he would be able to afford to keep any future debt he might incur paid in a timely manner. (AR, GE 6; GE 7; Tr. 51-52.)

In 2006 Applicant and his wife borrowed money from her father to buy land and build their house on it at the cost of about \$172,000. In December 2007, after the house was built, Applicant took out a \$220,000 first mortgage loan on the property and used those proceeds to repay his father-in-law. He was not clear in describing what he did with the remaining \$48,000, other than to say that some went to his father-in-law for other help with building the home. (GE 3; Tr. 52-54.)

In March 2008 Applicant was terminated from his previous job for improper watch-standing procedures, and was unemployed until obtaining his current position in July 2008. During that time he received unemployment compensation and his wife was employed. From that point on, they started falling behind on mortgage payments and other bills. They prioritized keeping their house, and in 2011 or 2012 they were able to renegotiate the terms of their mortgage loan, which has been timely paid since then. (AR; GE 2; GE 3; Tr. 23-24, 39-41, 46-47, 54-56.)

The three SOR-listed credit card debts, totaling \$10,612 (¶¶ 1.b, 1.c, and 1.d), first became delinquent in late 2008. SOR ¶ 1.e alleges a \$1,054 medical debt that has been delinquent since 2009. Applicant made no payments to any of these creditors despite being employed in his present position throughout that time. He testified that he earns \$25 per hour, which would be about \$54,000 per year, plus varying amounts of overtime. His wife earns \$21 per hour, or about \$43,700 annually. (AR; GE 2; Tr. 39.)

Applicant received his SOR on February 11, 2015, and promptly began the process of filing another bankruptcy. On February 18, 2015, he completed the mandatory credit counseling by an approved agency via the internet, but no debt repayment plan was prepared. His Chapter 13 petition was filed on February 27, 2015, and he documented eleven payments to a trustee between March 30, and August 3, 2015, totaling \$6,264.75. Applicant did not supply evidence of his plan's confirmation, or the schedules showing what debts are included in it. He testified that the plan is to continue for five years. He could not explain why the court set payments that will result in almost \$74,000 being paid into the plan over that period, when the only debt he could identify, in addition to the \$11,666 in debts on the SOR, was a loan of about \$20,000 for his wife's new car that they purchased in November 2014. (SOR Receipt; AR; AE A; AE B; Tr. 42-48, 66-67.)

Despite being invited and given extra time after his hearing to do so, Applicant did not provide a copy of his family budget. He said they have a monthly surplus, but very little in savings and things are tight with his new bankruptcy payments being taken out of his paychecks. He also submitted no character references or other evidence concerning the nature or quality of his job performance. (Tr. 47-51, 57-70.)

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 (DCs) and mitigating conditions (MCs), 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 under 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.

The record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant discharged more than \$37,700 in formerly delinquent debt in November 2004 via a Chapter 7 bankruptcy. He started falling behind on consumer and medical debt again in 2008, and continues to owe more than \$11,600 in delinquent debt that he could not, or chose not to, repay. These debts and his history of financial irresponsibility raise security concerns under DCs 19(a) and (c), 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 SOR-listed delinquent debts are significant and ongoing, without indication that the circumstances under which they arose have changed. His history of financial irresponsibility goes back more than 12 years, despite regular employment in positions of his choosing during all but four months when he collected unemployment while between jobs. He therefore failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). He voluntarily incurred all of the debt in question, and has been fully employed since the period the payments first became delinquent in late 2008. He incurred an additional \$20,000 in debt to buy a new car in November 2014, rather than resolve his longstanding delinquencies. He did not demonstrate responsible action under the circumstances.

Applicant provided evidence of recent bankruptcy credit counseling, but has not yet shown substantial progress toward debt resolution or changes to bring his financial situation under control. Bankruptcy is a lawful means of debt resolution, but is neither intended, nor serves, to demonstrate a good-faith effort to resolve past-due debts when employed each time financial security concerns arise when applying for a clearance. Applicant's Chapter 13 plan may provide the discipline he needs to resolve his debts if he balances future spending with income, but it does not yet establish mitigation of his delinquent debts under MC 20(c) or (d). MC 20(e) is not implicated since Applicant admitted all allegations in the SOR.

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 pertinent facts and circumstances surrounding this case. Applicant has incurred substantial delinquent indebtedness that he made little effort to repay. These debts remain outstanding, creating the ongoing potential for pressure and duress. He presented insufficient evidence to show that his financial situation will not continue to deteriorate, to support a finding that continuation or recurrence are unlikely, or that behavioral changes demonstrate rehabilitation. He is a mature and experienced individual who is accountable for his choices and financial irresponsibility. Overall, the

record evidence creates ongoing doubt as to Applicant's present eligibility and suitability for a security clearance.

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 e: 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.

DAVID M. WHITE
Administrative Judge