



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



In the matter of:

ISCR Case No. 14-06634

Applicant for Security Clearance

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

February 23, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 48-year-old employee of a defense contractor. He is alleged to be delinquent on seven debts in the total amount of \$332,153. All seven delinquencies remain unresolved. Eligibility for access to classified information is denied.

Statement of the Case

On April 13, 2012, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On May 12, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 (AG) effective September 1, 2006.

On July 24, 2015, Applicant answered the SOR (Answer), and requested a hearing before an administrative judge. The case was assigned to me on October 21,

2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 4, 2015, scheduling the hearing for December 14, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on his own behalf and presented one document, marked Applicant Exhibit (AE) A. Department Counsel had no objection to AE A, and it was admitted. The record was left open for receipt of additional documents until January 19, 2016. On January 19, 2016, Applicant requested the deadline for the submission of additional documents be extended until February 2, 2016. Department Counsel had no objection and the extension was granted. However, Applicant failed to submit anything further. The record then closed. DOHA received the transcript of the hearing (Tr.) on December 22, 2015.

Findings of Fact

Applicant is a 48-year-old employee of a defense contractor. He served on active duty in the Navy for 23 years from 1985 to 2008. He retired in 2008 at the rank of chief petty officer. He is married and has one daughter. (GE 1; Tr. 48-51.)

As listed in the SOR, Applicant was alleged to be delinquent on seven debts in the total amount of \$332,153. Applicant admitted the debts alleged in SOR ¶¶ 1.a and 1.e, but denied the delinquent debts alleged in SOR ¶¶ 1.b through 1.d, 1.f, and 1.g. His debts are identified in the credit reports entered into evidence. (Answer; GE 2; GE 3; GE 4; GE 5.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is past due on his mortgage as alleged in SOR ¶ 1.a. His total mortgage balance is approximately \$313,995, and he is \$10,146 past due on his monthly payment obligations as stated on the December 2015 credit report. His mortgage delinquency first occurred in July 2015. Applicant became delinquent on this loan when he had to pay for costly repairs to the house. He made a payment agreement with the lender and brought the account current, but he knew that he could not sustain the payments because the payments exceeded his disposable funds. He testified that he is saving the money he would pay to his mortgage company in his bank account. He hopes to force the mortgage company to refinance his adjustable rate mortgage into one he can afford. He explained that he consulted an attorney and was told that failing to make payments on his mortgage was the best method to negotiate with the mortgagor. After he renegotiates this loan, he will remit payment to the bank for the past-due months. This debt is unresolved. (GE 5; AE A; Tr. 19-22, 41-45.)

Applicant is indebted to a collection agent for a charged-off account in the approximate amount of \$14,724, as alleged in SOR ¶ 1.b. Applicant testified that he believed this debt was related to a vehicle that was repossessed. He claimed to have satisfied the debt with the original creditor. He produced no documentation to substantiate his claim. He has not contacted the collection agent. This debt is unresolved. (Tr. 23, 32, 36-39.)

Applicant is indebted on two collection accounts held by the same creditor in the approximate amounts of \$2,363 and \$220 as alleged in SOR ¶ 1.c and 1.d. Applicant does not recognize these accounts, but has not contacted the creditor or otherwise disputed these debts. They are unresolved. (Tr. 24, 36.)

Applicant is indebted on a monthly videogame subscription account in the approximate amount of \$97 as alleged in SOR ¶ 1.e. Applicant testified he disputed this debt with the creditor because he returned a rented videogame, but the company never credited him for its return and charged him for the game. Applicant failed to provide any documentation to substantiate a valid basis for his dispute. This debt is unresolved. (Tr. 26-27, 35.)

Applicant is indebted to a cell phone provider in the amount of \$558 as alleged in SOR ¶ 1.f. He testified that he never had an account with this cell phone provider. He has not contacted this creditor or formally contested this debt. It remains unresolved. (Tr. 27-28, 33-34.)

Applicant is indebted to an exterminator in the approximate amount of \$196, as alleged in SOR ¶ 1.g. He has not contacted this creditor. This debt remains unresolved. (Tr. 28, 33.)

Applicant attributed his debts to the excessive costs of a home repair and to a reduced income after retiring from the Navy. He testified that he participated in four weeks of financial counseling classes through his church. (Tr. 51.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. 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, administrative judges apply the guidelines 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(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.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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.

Section 7 of EO 10865 provides that adverse 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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 has a history of financial indebtedness documented by the credit reports in evidence that substantiate all of the allegations. He has been unable or unwilling to address his delinquencies and has not had recent contact with the majority

of his creditors. The evidence raises security concerns under both of these disqualifying 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's financial problems are ongoing. He has seven unresolved delinquent accounts, as identified on the SOR. He has not demonstrated that future financial problems are unlikely. AG ¶ 20(a) has not been established.

Applicant blamed his financial problems on unexpected home repairs and a decreased income after retiring from the Navy. These are circumstances beyond his control. However, he failed to reasonably anticipate them or to act responsibly under those circumstances, and did not address his debts in a timely manner. AG ¶ 20(b) has not been fully established.

Although Applicant testified he received counseling for his financial problems through his church, there are no clear indications that his financial problems are being resolved or are under control. All of his SOR-listed debts remain unaddressed. AG ¶ 20(c) has not been fully established.

Applicant claimed that he is disputing the following alleged debts: SOR ¶ 1.b because he believes he resolved it; SOR ¶¶ 1.c and 1.d, because he does not recognize the creditor; SOR ¶ 1.e because he returned the videogame in question; SOR

¶ 1.f, because he did not have an account with the creditor; and SOR ¶ 1.g, because he was not aware of the debt. However, to be fully applicable, AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. Applicant has not done so. AG ¶ 20(e) has not been fully established.

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. 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 honorably served in the Navy for 23 years. However, he is a mature adult and responsible for his choices and financial obligations, and he lacks the resources to fully address his voluntarily incurred debts. Overall, 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 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, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	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