



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



In the matter of:)	
)	
)	ISCR Case: 14-06920
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

02/29/2016

Decision

DAM, Shari, Administrative Judge:

Applicant has delinquent debts owed to a creditor for four student loans, totaling \$27,000, and to two other creditors. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On March 11, 2013, Applicant submitted a security clearance application (SF-86). On April 27, 2015, the Department of Defense (DOD) 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; DOD 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* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on May 27, 2015 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) On August 20, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant on August 25, 2015, and received by him on September 24, 2015. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. He timely submitted an exhibit that I marked as Applicant Exhibit (AE) A and admitted into the record without objection from Department Counsel. Applicant did not submit any objections to the Government's Items; hence, Items 1 through 7 are admitted into evidence. DOHA assigned the case to me on November 17, 2015.

Findings of Fact

In his Answer, Applicant admitted all six of the allegations contained in the SOR. His admissions are incorporated into these findings of fact.

Applicant is 37 years old and married. He and his wife have three young children. In 2004 he earned an associate's degree. He subsequently attended college for two years, but did not complete a degree. In July 2007 he began working for his current employer, a federal contractor. (Item 4.)

Based on credit bureau reports (CBRs) from March 2013 and October 2014, the SOR alleged six delinquent debts. Four of those debts are delinquent student loans, which total \$27,898. The SOR also alleged a delinquent credit card (\$2,586) and medical bill (\$227). The debts became delinquent between 2013 and 2014. (Items 5, 7.) In his Answer, Applicant stated that he was unable to pay the debts because his family lives on his salary, as his wife stays home with their three young children who are not school age. (Item 3.)

In response to the FORM, Applicant submitted information that he transferred the four student loans to a new creditor, not listed on the CBRs. Two of the loans were dispersed in 2006 and two in 2007. According to Applicant's calculation, the outstanding balance of the four loans is \$20,088. On September 27, 2015, Applicant entered into a loan rehabilitation agreement with his new creditor. The agreement requires him to pay \$5 per month, beginning that month, and continuing for nine consecutive months. Thereafter, the loans become eligible to be purchased by a lending institution, and the monthly payment will increase. (AE A.) No other evidence was provided regarding the remaining delinquent debts.

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 (AG) 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, 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

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 relating to 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹

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's student loans became delinquent in 2013 and continued to be delinquent until September 2015 when he entered into a loan rehabilitation agreement. The credit card and medical debts became delinquent between 2013 and 2014. Applicant's history of inability or unwillingness to pay lawful debts, raises security concerns under the above disqualifying conditions, and shifts 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;

¹ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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 delinquent debts are ongoing and cast doubt on his reliability. He provided some evidence that the delinquencies were caused by his wife's decision to not work outside the home because she is caring for their small children. That situation may be a condition beyond his control; but he failed to submit documentation indicating that prior to September 27, 2015, he attempted to contact creditors or act responsibly under these circumstances. He presented no evidence of financial counseling. He presented no evidence about his non-student loan debts. There are not clear indications that the financial problems are under control. Applicant produced evidence that two days after receiving the FORM, he entered into a loan rehabilitation agreement and consolidated his student loans. His actions in this instance are not construed to be a good-faith effort to resolve his debts, as contemplated under the above mitigating conditions. He did not formally dispute any of the SOR-listed debts. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions.

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.

According to 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 is a mature adult,

who is responsible for his choices and conduct that underlie the security concerns alleged in the SOR. He waited until receiving the FORM to address his delinquent student loans, and has not taken action on two other delinquent debts. He has not completed the student loan rehabilitation program and established a realistic payment plan toward resolution of these debts. He provided no evidence of financial counseling or a budget. At this time he has not established a track record of debt resolution or financial responsibility. The potential for pressure, coercion, and duress from his financial situation remains undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's judgment, reliability, and present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from the financial considerations.

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 1.f:	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.

SHARI DAM
Administrative Judge