



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-01295
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

03/24/2016

Decision

HOGAN, Erin C., Administrative Judge:

On August 26, 2015, the Department of Defense (DOD) 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 (AG) effective within the Department of Defense after September 1, 2006.

On September 19, 2015, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on October 27, 2015. Applicant received the FORM on November 10, 2015. Applicant had 30 days to submit a response to the FORM. He did not submit a response to the FORM. On February 1, 2016, the FORM was forwarded to the Hearing Office and assigned to me on March 1, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Rulings on Evidence

Item 3 of the FORM is a portion of the Report of Investigation (ROI) from the background investigation of Applicant. It is a summary of Applicant's Personal Subject Interview completed by the investigator conducting his background investigation on September 19, 2012, and October 22, 2012. It is unsworn and unauthenticated. DOD Directive 5220.6, Enclosure 3, ¶ E3.1.20 states, "An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence." (see ISCR Case No. 11-13999 (App. Bd., February 3, 2014)).

Although Applicant, who is representing himself, has not raised the issue via an objection, I am raising it *sua sponte* because Item 3 is not properly authenticated. Applicant's failure to mention this issue in a response to the FORM is not a knowing waiver of the rule because he more than likely was unaware of the rule. Waiver means "the voluntary relinquishment or abandonment – express or implied – of a legal right or advantage, the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." *Black's Law Dictionary*, 1717 (Bryan A. Garner, editor-in-chief, 9th ed., West 2009).

While Department Counsel mentions the authentication requirement of ¶ E3.1.20 of the Directive in Footnote 1 of the FORM without directly citing it, I cannot conclude Applicant expressly waived this rule because he did not submit a response to the FORM. In accordance with the Directive, Enclosure 3, ¶ E3.1.20, Item 3 is not admissible and will not be considered in this decision.

Findings of Fact

In his response to the SOR, Applicant admits the SOR allegations. (Item 1)

Applicant is an employee of a DOD contractor seeking to maintain his security clearance. He has worked for his current employer since April 1992. He has some college credit. He is married and has two children. (Item 2)

On July 24, 2012, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). In response to Section 26 – Delinquency Involving Routine Accounts, Applicant listed several delinquent accounts. (Item 3, section 26) A subsequent background investigation revealed the following delinquent accounts which are alleged in the SOR: a \$10,183 credit card account that was charged off in September 2010 (SOR ¶ 1.a: Item 4 at 2; Item 5 at 2; Item 6 at 7); a \$12,104 credit card account that was charged off in September 2010 (SOR ¶ 1.b: Item 4 at 3; Item 5 at 2; Item 6 at 4); a \$1,238 account that was charged off in September 2011 (SOR ¶ 1.c: Item 4 at 7); and a \$15,521 credit card account that was charged off and placed for collection in June 2010 (SOR ¶ 1.d: Item 6 at 5, 14).

In his response to the SOR, Applicant states that he formally disputed all four of the debts alleged in the SOR. He is not disputing that he owes the debts, but wants to

verify the actual amount owed. He also wants to make sure that the laws of his state of residence and the Fair Credit Reporting Act are being followed. Once he receives this information, he will work to resolve these issues. He claims that this has been going on for three to five years and he has not heard anything. He did not provide copies of the dispute letters. He has not made arrangements with any of the creditors towards resolving these accounts. (Item 1)

Applicant states that he does not have any gambling problems, substance abuse problems, or alcohol problems. He does not have a criminal record. He has had a security clearance for over 25 years without incident. (Item 1)

Applicant did not provide any character references, performance evaluations, or awards that could be considered under the whole person.

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 must be considered when determining 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 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 applicant or proven by Department Counsel. . . ." The applicant 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 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 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 disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations) apply to Applicant's case. Applicant encountered financial problems since about 2010. The SOR alleges four delinquent accounts with a total balance of approximately \$39,046. These debts are unresolved. Both AG ¶ 19(a) and AG ¶ 19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving 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 creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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);

AG ¶ 20(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);

AG ¶ 20(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);

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts); and

AG ¶ 20(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).

AG ¶ 20(a) does not apply. Applicant incurred the delinquent accounts alleged in the SOR more than five years ago. The debts were charged off or placed for collection in 2010 and 2011. While Applicant states that he formally disputed each debt, he did not provide copies of the letters he sent to each creditor. He mentions that his attempts at disputing the debts have lasted between three to five years. It is not clear whether he followed up on his initial disputes or if he was passively waiting for the creditors to contact him. Each debt alleged in the SOR remains unresolved. Applicant's financial issues are ongoing.

AG ¶ 20(b) does not apply. Applicant did not mention circumstances beyond his control that contributed to his financial situation.

AG ¶ 20(c) does not apply because Applicant did not attend financial counseling. The status of his delinquent accounts remain unresolved. His financial situation remains uncertain.

AG ¶ 20(d) does not apply, because Applicant did not demonstrate that he made a good-faith effort to resolve his delinquent accounts. He apparently disputed the amounts of the debts several years ago, but did not follow up on attempting to resolve the accounts such as by entering into a repayment plan or negotiating a settlement for a lesser amount. Applicant's efforts to resolve his delinquent accounts were minimal. He could have been more proactive in resolving his delinquent accounts.

AG ¶ 20(e) does not apply. While Applicant says that he disputed all four debts alleged in the SOR, he is not disputing that he owes them. He is disputing the balance of each debt. Applicant did not provide evidence indicating that he has a reasonable basis to dispute the debts and did not provide evidence of what steps he took to resolve the issue. It appears he disputed these debts several years ago, but was not proactive in following up to resolve the issue.

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.

In requesting an administrative determination, Applicant chose to rely on the written record. However, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts that would mitigate financial considerations security concerns. While Applicant disputed all four debts, he does not deny that he owes the debts. He is disputing the balance. He has not taken action towards attempting to resolve these accounts, such as entering into a repayment agreement with each creditor. It is unknown whether Applicant has sufficient income to

meet his financial obligations. Applicant did not mitigate the concerns arising from financial considerations.

The determination of an individual's eligibility for 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, the granting of a security clearance is not warranted. In the future, if Applicant takes proactive steps towards resolving his delinquent accounts and establishes a track record of repayment, he may demonstrate persuasive evidence of his security worthiness.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's 24 years of service with his employer. In the future, he may be able to demonstrate a track record of resolving his financial obligations. It is too soon to make that conclusion at this point. The security concerns raised under financial considerations are not mitigated.

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
Subparagraphs 1.a – 1.d:	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.

ERIN C. HOGAN
Administrative Judge