



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



In the matter of:

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)	ISCR Case No. 08-01131
)	
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Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

July 25, 2008

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant submitted his Security Clearance Application (SF 86), on August 1, 2007. On March 27, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On April 15, 2008, Applicant answered the SOR in writing and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on June 2, 2008. The FORM contained documents identified as Items 1 through 7. By letter dated June 3, 2008, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on June 9, 2008. His response was due on July 9, 2008. He submitted three additional documents within the required time period. Department Counsel did not object to Applicant's submissions. On July 2, 2008, the case was assigned to me for a decision. After reviewing Applicant's submissions, I marked them as Applicant's exhibits (Ex.) A, B, and C and admitted them to the record in this case.

Findings of Fact

Applicant is 62 years old. He and his wife have been married since 1969. Since 1997, Applicant has been employed as a test technician by a defense contractor. He has held a security clearance since 1997. (Item 5.)

The SOR contains 28 allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.ab.) The 28 delinquent debts alleged in the SOR total \$76,179. (Item 1.) Of the 28 allegations of financial delinquency in the SOR, 23 were identified and listed on Applicant's credit bureau report of March 11, 2008, and five were identified and listed on his credit bureau report of August 23, 2007. (Item 6; Item 7.) In his Answer to the SOR, dated April 15, 2008, Applicant admitted 27 of the allegations (¶¶ 1.a. through 1.q. and ¶¶ 1.s. through 1.ab.) Applicant's admissions are admitted herein as findings of fact.

Applicant denied the allegation at SOR ¶1.r. and presented a photocopy of the face of a personal check in the amount of \$1,716.38, dated October 8, 2007, and made out to the alleged creditor. He also asserted that the allegation he admitted at ¶1.n. was a duplicate of the allegation he admitted at ¶ 1.e. Applicant's credit bureau report of August 23, 2007, lists two accounts with the same creditor for SOR ¶1.e. and SOR ¶1.n. The account numbers for the two debts are not the same and do not match. The debt alleged at ¶1.e was referred for collection in June 2004; the debt identified at ¶ 1.n. was referred for collection in October 2006. (Item 3; Item 7.)

In his response to the FORM, Applicant stated he had contacted a representative of the creditor identified at SOR ¶ 1.l. and had made an offer to settle the account. He further stated that the creditor had responded with a counter offer. He did not indicate whether he and the creditor had reached a settlement agreement. (Ex. A.)

In response to the FORM, Applicant also provided a statement from the creditor identified at ¶1. z. showing he had paid the past due debt alleged in the SOR and, as of April 11, 2008, his account with that creditor was paid in full. (Ex. B.) Also in response to the FORM, Applicant provided a document which purported to show that a debt of \$50, alleged at SOR ¶1.m. as in collection status since July 2004, had been satisfied.

However, the document did not show the debt had been satisfied but, instead, showed a balance due of \$30. (Ex. C.)

Thirteen of Applicant's delinquent accounts were placed for collection in 2004, and three of his delinquent accounts were identified as bad debts in 2004. (Item 1, ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., 1.g., 1.h., 1.j., 1.k., 1.l., 1.m., 1.o., 1.p., 1.q., 1.v., 1.ab.)

In his Answer to the SOR, Applicant stated he had applied for credit counseling with his credit union. He further stated that because the credit counselors at the credit union had a heavy work load, they were unable to schedule him for credit counseling until late in May 2008. Applicant stated that the credit union credit counselors had referred him to an alternative credit counseling service. In his response to the FORM, Applicant reported he had completed one credit counseling session with the alternative credit counseling service. (Item 4; Ex. A.)

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense 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. 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, 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 conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant provided credible documentation to corroborate his assertion that one of his debts had been satisfied. In his response to the FORM, Applicant asserted he had satisfied a debt for \$56, alleged at ¶ 1.z., that was allegedly 120 days past due. His Ex. B corroborated Appellant’s assertion that the account was satisfied. The SOR allegation at ¶ 1.z. is concluded for Applicant.

However, as Applicant’s 27 remaining delinquencies demonstrate, he accumulated substantial delinquent debt and was unwilling or unable to satisfy his creditors over a considerable period of time. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

The financial considerations guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F

mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it 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(a)) Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person's control, such as 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(b)) Still other mitigating circumstances that might be applicable include evidence 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(c), or the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (AG ¶ 20 (d)) Finally, an applicant can offer in mitigation documentary evidence to establish that he or she has a reasonable basis to dispute the legitimacy of a past due debt and has taken action to resolve the issue. (AG ¶ 20(e).)

Many of Applicant's financial delinquencies arose in calendar year 2004 and have not been satisfied. He offered no explanation for the significant debt which continues to the present day, a situation that raises concerns about his judgment and reliability.

In his answer to the SOR, Applicant denied responsibility for the debt alleged at ¶1.r. As evidence of payment, he offered a photocopy of the face of a personal check made out to the creditor. He failed to provide evidence that the check was received and negotiated by the creditor. He also failed to provide evidence from the creditor that the debt was satisfied.

Applicant asserted that the debt alleged at SOR ¶ 1.e. duplicates and repeats the debt alleged at SOR ¶ 1.n. Applicant's credit bureau report of August 23, 2007, lists two accounts with the same creditor for SOR ¶1.e. and SOR ¶1.n. The account numbers for the two debts are not the same and do not match. Applicant provided no documentation to corroborate his assertion that the debt alleged at ¶1.e. was a duplicate of the debt alleged at ¶1.n. Additionally, Applicant, in his response to the FORM, asserted that Ex. C established satisfaction of the debt alleged at ¶ 1.m., a debt for \$50 that had been placed for collection in 2004. However, Applicant's Ex. C was a request for payment from the creditor for \$30 and failed to establish that the debt of \$50 had been satisfied.

Applicant has been steadily employed with his current employer for approximately 11 years. During that time, Applicant has not contacted the majority of his creditors to arrange payment plans or to initiate settlement. He sought credit counseling only recently, and, in his response to the FORM, he noted he had attended one session of credit counseling. I conclude that that none of the financial considerations mitigating conditions fully apply to the facts of Applicant's case.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Appellant is a mature person with a lifetime of financial experience. He accumulated over \$70,000 in delinquent debt and failed to arrange payment or satisfaction of the majority of those debts over a period of years. He offered no information that his financial delinquencies resulted from circumstances beyond his control. Applicant’s unwillingness to address his financial delinquencies suggests that they will continue and likely recur.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant’s eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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. through 1.y.: **Against Applicant**
- Subparagraph 1.z.: **For Applicant**
- Subparagraphs 1.aa. and 1.ab.: **Against Applicant**

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge