



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



In the matter of:

ISCR Case No. 09-01028

Applicant for Security Clearance

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

March 31, 2010

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a long history of financial indebtedness. He currently has 22 delinquent debts, and has failed to submit proof that any of them are satisfied. He has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a 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 revised adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the Statement of Reasons (SOR) in writing on December 30, 2009, and elected to have the case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on January 14, 2010. A complete copy of the file of relevant material (FORM) was received by Applicant on January 26, 2010. He was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. As of March 26, 2010, he had not responded. The case was assigned to me on March 30, 2010.

Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. He has worked for his current employer since May 2004. Applicant served the United States Army from 1992 through the present, on both active duty and in the inactive reserve, achieving the rank of Captain. He has a bachelor's degree, which was awarded in December 1991. He is single with no children (Item 5; Item 6).

Applicant has a long history of financial delinquencies. In October 1997, he filed for Chapter 7 bankruptcy, which was dismissed (Item 6 at 6). He filed Chapter 13 bankruptcy in March 1999. The Chapter 13 was also dismissed, as Applicant was unable to make his payments (Item 7 at 5). During the same period, he purchased two vehicles, which were later repossessed (Item 14; Item 7). An April 2003 credit report shows Applicant had \$86,454 in collection and charged-off accounts (Item 10). In an October 2004 statement to a Special Agent of the Defense Security Service, Applicant acknowledged "my credit issues are the result of a poor decision with personal relationships, trying to help family members (mother and sister), and living beyond my means" (Item 7 at 5). He further stated "I do not intend to create bad debts in the future" (Item 7 at 5).

The SOR alleges 22 delinquent debts, which are all substantiated in the record (Item 10; Item 11; Item 12; Item 13). Applicant admitted all 22 debts alleged in SOR totaling \$85,057. He has not made payments on 16 of the accounts listed in ¶¶ 1.a, 1.b, 1.f-1.o, 1.r, 1.s, 1.u, 1.v. However, he claims he has satisfied five debts stated in ¶¶ 1.c, 1.d, 1.e, 1.q, and 1.t. totaling \$3,271. He asserts that he is making payments on 1.p.

Applicant claims that the debt in ¶ 1.c owed to NCO Financial in the amount of \$96 is paid. This debt has been past due since October 2005 (Item 12 at 14). Applicant incurred this debt when he failed to pay his Direct TV bill (Item 6 at 7, 15). Applicant claims to have satisfied this debt in full by payment of a money order, but presented no proof of payment (Item 6 at 15).

The second debt Applicant claims is paid, listed in ¶ 1.d, is owed on a medical account in the amount of \$50. This debt has been past due since October 2007 (Item 11 at 1). Applicant incurred this debt for a doctor's visit (Item 6 at 17). In his Answers to Interrogatories, Applicant claimed that it was his insurance company's responsibility to pay this debt. He attached two account statements, each showing a bill of \$50, along with a letter to his human resources department. He offered no proof that the account has, in fact, been resolved (Item 6 at 24-26).

Applicant claims the debt in ¶ 1.e, owed to PGT SNDCOL in the amount of about \$141, is paid. This debt has been past due since April 2005 (Item 11 at 1). This debt was originally owed to Lakewood Refuse (Item 11 at 1; Item 6 at 16). Applicant claims that “this bill should be removed from my 1/23/09 CBR due to bill taken care of by Landlord...” (Item 6 at 16). He presented no documentation that this bill was satisfied by his landlord or otherwise paid in full (Item 6 at 16; Answer).

Applicant claims the debt listed in ¶ 1.q owed to the State of Washington in the amount of about \$2,659 is paid (Item 12 at 4). This debt resulted from a tax lien filed in November 2005 (Answer). Applicant claims this debt was satisfied in full through garnishment of his pay, but he presented no documentary evidence to substantiate this claim (Answer).

Applicant claims the debt listed in ¶ 1.t owed to DPT Treasury in the amount of about \$325 is paid (Item 12 at 8; Answer). Applicant claims this debt was satisfied in full with his tax refund in 2008, but presented no documentary evidence to substantiate this claim (Answer).

Further, Applicant claims the \$62,586 debt owed to DP of Education, listed in ¶ 1.p, is being paid through garnishment of \$497 per pay period since December 2009. This debt is for a delinquent student loan used to finance Applicant’s education (Answer; Item 5 at 37). He failed to produce documentation to show the garnishment. Applicant’s Answer to the Interrogatories suggests that he has been making periodic payments on this debt. His claim is substantiated, in part, by a statement showing interest paid on his student loan (Item 6 at 32-33). However, the statement fails to identify the source of the payments. Applicant explained that past income tax refunds were applied to this debt (Item 6 at 11). A July 2008 letter supposedly evidences additional voluntary payments on this account, however, the letter does not show that any payments were actually made under the agreement, nor does it actively identify the creditor to whom payments would be made (Item 6 at 34).

Applicant attributes some of his debts to various causes, including living beyond his means (Item 7 at 5). He suggested that his former roommates may have engaged in identity theft, causing some of the debts (Item 6 at 6). However, he failed to identify which debts were not his and he did not provide proof of identity theft. The record does not reflect that he successfully contested any of his debts.

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 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 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. 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 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:

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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or financial analysis.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations. Further, his financial problems have been ongoing for at least the past 13 years, without resolution, while at the same time Applicant has continued to incur additional debts. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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.

The evidence does not show that Applicant has resolved any of the 22 debts alleged in the SOR. There is minimal evidence that some payments have been made on the debt in ¶ 1.p, however, there is no evidence of regular payments to this creditor. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) is not applicable. Applicant attributed some of his financial problems to identity theft. However, he has not presented any documentation in support of this claim. Further, to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has worked for his current employer since May 2004. He did not submit evidence of any payments even on the smallest debts. He did not present a plan on how he will address his delinquent debts, other than to indicate in his Answer that he has contacted some of his creditors. He did not contest the debts. I am unable to make a determination that he acted responsibly under the circumstances.

Applicant did not produce any evidence to suggest he attended any financial counseling. Further, there is little indication that Applicant's delinquent accounts are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant has not made a good-faith effort to pay or resolve his delinquent debts. The record establishes that payments have been made on only 1 of 22 debts. With respect to ¶ 1.p, Applicant's Answer suggests that this debt is now being paid through garnishment of his wages and past payments were made at least partially through the garnishment of his income tax refunds. The satisfaction of a debt through the involuntary establishment of a garnishment is not the same as a good-faith effort to repay the debt. Further, he presented no evidence to support the garnishment. AG ¶ 20(d) is not applicable.

Applicant initially disputed owing a number of the debts alleged in the SOR, however, he admitted each debt in his Answer. Further, he presented no evidence to show that he was in the process of disputing any debts or that he had successfully disputed the debts in the past. AG ¶ 20(e) is inapplicable.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. I considered Applicant's service in the United States Army since 1992. However, Applicant is 42 years old and is an educated man. He is clearly aware of the need to be financially responsible. He has had ample opportunity to address his financial delinquencies, but has failed to do so.

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 has not mitigated 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
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Subparagraphs 1.a-1.v:	Against Applicant
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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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge