



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



In the matter of:)
)
) ISCR Case No. 10-07987
)
)
Applicant for Security Clearance)

Appearances

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

06/13/2014

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concern. Eligibility for access to classified information is denied.

Statement of the Case

On August 15, 2000, Applicant was denied a security clearance for financial considerations by a decision of a Defense Office of Hearings and Appeals (DOHA) administrative judge. With an undated letter, Applicant requested to re-apply for a security clearance. That request was accepted by DOHA on August 29, 2011, and the Applicant was allowed to re-apply. On March 7, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOHA acted 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 within the DOD on September 1, 2006.¹

Applicant answered the SOR with an undated response, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on April 16, 2014. The FORM was mailed to Applicant who received it on April 21, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any further information. The case was assigned to me on June 9, 2014.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations, although he stated that the debt alleged in SOR ¶ 1.b was paid and he was making payments on the debt alleged in SOR ¶ 1.c. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 38 years old. He is married and has two children. He has worked for his current employer, a defense contractor, since 1997. He possesses a high school diploma. He has no military service.²

The SOR lists 14 delinquent debts totaling \$28,619, consisting of consumer debt, repossessed car deficiencies, telecommunications debt, and some medical debts. These debts are supported by credit reports dated November 2011, February 2013, and December 2013. Applicant did not provide any documentation supporting payment of the debts or establishing any payment plans.³

Applicant's recent financial difficulties occurred about five years ago when he became overwhelmed by his bills because he was the principal wage earner for his family. He purchased three vehicles between 2001 and 2005, which were all repossessed for non-payment. He stated to an investigator that he does not feel he can pay his delinquent debts and will not do anything to settle them. He has not received any credit counselling for his debts.⁴

¹ Items 4, 6-7.

² Item 8.

³ Items 1, 9-10, 12.

⁴ Item 11.

Applicant's personal financial statement indicated he has a \$570 net monthly remainder after his expenses and debt payments. This does not account for payments toward most of the SOR-related debts.⁵

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 list potentially disqualifying conditions and mitigating conditions, which are 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 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

⁵ Item 13.

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

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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 provide evidence of actions to resolve the issue.

Applicant's debts are recent and remain unresolved. He did not provide sufficient evidence to show that the debts are unlikely to recur. AG ¶ 20(a) does not apply. Applicant provided evidence that he became overwhelmed with debt in 2009, which contributed to his financial problems. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. He presented no such evidence of responsible behavior. I find AG ¶ 20(b) does not apply. Applicant presented no evidence of financial counseling and there is no clear evidence that Applicant's financial problems are being resolved or under control because the debts remain unpaid. There is no evidence that he has made a good-faith effort to pay the SOR debts. I find AG ¶¶ 20(c) and 20(d) do not apply. He failed to present documentary evidence showing the payment of SOR ¶ 1.b, or the payment plan for SOR ¶ 1.c. AG ¶ 20(e) does not apply.

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 guideline 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 also considered Applicant's personal situation. However, he has not shown a track record of financial stability, to include his past financial problems which led to his clearance denial in 2000, and the current unpaid SOR-related 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 security concerns arising under Guideline F, financial considerations.

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.n:	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.

Robert E. Coacher
Administrative Judge