



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



In the matter of:)
)
) ISCR Case No. 10-09165
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

March 22, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant had four delinquent debts totaling \$100,304. Only one of the debts has been satisfied, and it was satisfied through an involuntary garnishment. Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 29, 2011, the Department of Defense issued a Statement of Reasons (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 adjudicative guidelines (AG) effective on September 1, 2006.

Applicant's Answer to the Statement of Reasons (Answer) was dated August 16, 2011. Applicant elected to have the case decided on the written record, in lieu of a

hearing, in his Answer. Department Counsel submitted the Government's written case on January 18, 2013. A complete copy of the file of relevant material (FORM) was received by Applicant on January 29, 2013. He was afforded 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant did not submit any objections or other information within the time period of 30 days after receipt of his copy of the FORM. The case was assigned to me on March 14, 2013.

Findings of Fact

Applicant is 62 years old. He earned a bachelor's degree in 1997. He has been employed with a government contractor since October 2005. He enlisted in the Navy in 1970, and served on active duty through June 1976. He is married and has two adult children. (Item 4.)

The Government alleged that Applicant is ineligible for a clearance because he has made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR lists four delinquent debts totaling \$100,304. Applicant denied each of the debts in his Answer. (Item 3.) His debts are as follows.

Applicant was indebted on a judgment in the amount of \$14,860, as alleged in SOR ¶ 1.a. On or about June 28, 2011, this judgment was satisfied through garnishment of Applicant's wages. Applicant provided a copy of the court-issued Satisfaction of Judgment. This debt is resolved. (Item 3; Item 5.)

Applicant was indebted on a second mortgage in the amount of \$60,000, as alleged in SOR ¶ 1.b. This debt is listed as a charged-off collection account. The debt was secured by Applicant's home, which was foreclosed upon by the primary mortgage holder in 2008. Applicant attributes this debt to his wife's layoff and excessive use of credit cards to meet household expenses and purchase building materials to build a small cabin. Appellant failed to provide details about his wife's layoff, including when the layoff occurred, the duration of unemployment, and how the layoff specifically impacted their ability to meet expenses. This debt has not been resolved. (Item 3; Item 5; Item 7.)

Applicant was indebted to a bank in the amount of \$12,281, as alleged in SOR ¶ 1.c, and identified by Appellant on his Electronic Questionnaire for Investigations Processing (e-QIP) dated February 4, 2010. In his Answer, Applicant claimed that this debt is a duplicate of SOR ¶ 1.a. However, Appellant did not produce evidence matching the Satisfaction of Judgment to this debt. Applicant had multiple delinquent accounts with this creditor, and it is not clear from the record which was satisfied and which remain delinquent. In the absence of clear evidence showing this account was a duplicate of SOR ¶ 1.a. or that it was paid independent of the judgment, this debt is still unresolved. (Item 3; Item 4; Item 5; Item 6; Item 7.)

Applicant was indebted on a delinquent credit card account in the amount of \$13,163, as alleged in SOR ¶ 1.d. Applicant presented a letter from this creditor, dated

May 12, 2011, indicating, "If this office receives the sum of \$10,691 by 05/25/11 (this offer will be null and void after 05/25/11), we will accept this as settlement in full." However, Appellant failed to submit proof he paid the settlement or otherwise addressed this debt in any manner. (Item 3.)

Applicant received financial counseling in March 2007. At that time, he began working with a debt settlement program. He paid the debt settlement company \$1,507 per month until he completed the program in May 2011. He settled six of nine debts listed in that plan. However, he did little to address the remaining three debts, which are alleged in SOR ¶¶ 1.b through 1.d. Applicant claimed in his Answer that he is "living today totally within [his] means (cash, no credit) trying to rebuild." However his most recent credit report reflects that he has a credit card with a balance of \$7,605. (Item 6.)

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 AG ¶ 2(a) describing 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 clearance 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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts that remained unpaid for a substantial period of time. He failed to produce evidence to show he has the means to satisfy his remaining delinquent accounts. 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 shows that Applicant resolved SOR ¶ 1.a through involuntary garnishment. He failed to meet his burden to produce evidence to show he has addressed the remaining three debts. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) is not applicable. Applicant explained in his Answer that he incurred his debts as a result of his wife's unemployment. Her unemployment was beyond Applicant's control. However, Applicant failed to introduce evidence of the breadth and scope of her unemployment or show the effect it had on their financial situation. Further, to be fully applicable, AG ¶ 20(b) requires that the individual act responsibly under the circumstances. Applicant did responsibly address some of his past debts from March 2007 to May 2011. However, Applicant failed to produce evidence that he has taken responsible actions to address his remaining delinquent accounts since May 2011. I am unable to make a determination that he acted responsibly under the circumstances.

Applicant attended financial counseling and participated in a debt settlement program from March 2007 to May 2011. He satisfied six debts through the help of the financial counseling service. However, none of the debts listed on the SOR were satisfied through the counseling. There is no evidence that Applicant's remaining financial problems 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 Appeal Board has held, "satisfaction of a debt through the involuntary establishment of a creditor's garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor."¹ Therefore, this condition is not applicable to SOR ¶ 1.a. The record fails to establish that any payments have been made on any of his remaining debts alleged in SOR ¶¶ 1.b through 1.d. AG ¶ 20(d) is not applicable.

¹ ISCR Case No. 08-06058 at 6 (App. Bd. Sept. 21, 2009.)

Applicant presented no evidence to show that he was in the process of formally disputing any of the debts on the SOR or that he had successfully disputed any of these debts in the past. AG ¶ 20(e) is not applicable.

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.

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 that guideline, but some warrant additional comment. Applicant failed to address his financial delinquencies. As a result, one debt was repaid through garnishment. The other three debts appear to remain unresolved. While his wife did experience a period of unemployment, without more information on their financial circumstances during that time, I cannot find that the unemployment was a mitigating factor. Applicant still utilizes a credit card, despite his statement to the contrary. He presented no plan to address the remaining delinquencies. Continuation of these circumstances is highly likely, and the potential for coercion, exploitation, or duress remains undiminished. 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
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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge