



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



In the matter of:)	
)	
)	ISCR Case No. 11-02457
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

09/27/2013

Decision

LYNCH, Noreen A., Administrative Judge:

On March 28, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested an administrative determination in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated July 30, 2013.¹ Applicant received the FORM on August 6, 2013. He did not submit additional information. I received the case assignment on September 24, 2013. Based on a review of the case file, I find Applicant has not mitigated the security concerns raised. Security clearance is denied.

¹The Government submitted twelve items in support of its case.

Findings of Fact

In his answer to the SOR, Applicant admitted all allegations under Guideline F, ¶¶ 1.a through 1.t. with explanations. (Item 4)

Applicant is 58 years old. He is an aircraft mechanic employed by a defense contractor. He served in various branches of the U.S. military from 1978 until 1992, receiving an honorable discharge. Applicant attended a technical college from January 2001 until April 2003. Applicant held a security clearance in 2003, but was denied a security clearance in 2009.² Applicant married his second wife in May 2010. (Item 5) Applicant has been employed with his current employer since February 2011. On April 28, 2011, he completed a security clearance application. (Item 5)

The SOR lists 18 delinquent debts totaling about \$21,409.00; and two allegations of bankruptcy filings: a Chapter 7 (2003) and Chapter 13 (2006). (Item 1)

Applicant lived and worked abroad from June 2009 until June 2010. (Item 6) Applicant was unemployed from June 2010 to February 2011, from December 2007 to April 2008, and from July 2005 to August 2005. (Item 4)

Applicant claims that his periods of unemployment led him to file for Chapter 7 Bankruptcy and also Chapter 13 Bankruptcy. In 2011, Applicant was questioned about other credit issues on his credit report. He explained that child support issues and inability to pay state taxes caused his financial problems. (Item 6) He filed the Chapter 13 Bankruptcy in May 2006 because of more issues stemming from unemployment and child support. He made payments of \$600 per month according to the wage earner plan for about 18 months before the Chapter 13 case was dismissed. He could not afford the payments. (Items 7 and 8)

Applicant completed a DOHA interrogatory in 2013. A 2013 credit report revealed 27 delinquent accounts with a combined total of \$62,812.00 of delinquent debt. (Items 7 and 9) Applicant stated that he obtained a loan of \$46,070 to satisfy the delinquent debts. He also disclosed that he hired a tax attorney to satisfy the tax issues. Applicant submitted documentation from a company that offers credit restorative services, with a credit listing form showing his 26 delinquent accounts totaling \$46,070. The documents were dated February 18, 2013. Applicant was to begin making monthly payments of \$509.84 in March 2013. Applicant also attached documentation from another service that he owed approximately \$14,500 in back taxes. He planned to enter a debt resolution plan with the company in February 2013. However, he first had to make a \$499 payment for an investigation fee. No offer in compromise or any repayment agreement with the IRS has been provided. (Item 6)

²The basis for the denial was delinquent credit issues and criminal history.

Applicant states that he can live within his means, but just “barely.” He had a monthly net income of \$3,206 with a monthly net remainder of \$1,326. He claims that his financial problems will ease because he has just completed his child support payments. (Item 6)

Policies

When evaluating an applicant’s suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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.

The United States Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant’s admissions and credit reports establish his delinquent debts. He also admits to two bankruptcy filings. He has a federal tax lien against him in the amount of \$13,134. AG ¶ 19(g) (failure to file annual Federal, state, or local income tax returns as required or fraudulent filing of the same), applies. The 2004 tax lien remains unpaid. His admissions and credit reports confirm these debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant’s financial difficulties since 2003 make it difficult to conclude that it occurred “so long ago.” Applicant still has a significant amount of delinquent debt despite two filings for Bankruptcy. The obligations remain current. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant did not provide information to prove that the delinquencies were beyond his control and that he acted responsibly.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant has failed to provide any documentation, such as receipts or current statements from creditors, to show that he has resolved any of his delinquent debts. Applicant produced documentation that he began to address the delinquent debts after the 2013 interrogatories. He submitted a plan but no record of any payments, which does not establish mitigation in the case. He did not present evidence that he received financial counseling. Although, his 2006 bankruptcy required online counseling. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem) partially applies. I find that there are not clear indications that his financial problems are being resolved and are under control. He has not met his burden of proof.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 58 years old. He has worked for his current employer since 2011. Applicant

held a security clearance in 2004, but was denied his clearance in 2009. He served in the military.

However, Applicant has delinquent debt of approximately \$46,070 plus unpaid back taxes of \$14,500, resulting in total delinquent debt of approximately \$60,000. His debts are higher than that reflected in the SOR. This is the case despite two bankruptcy filings. Since Applicant's 2011 interview with investigators, there is little evidence to show that he has acted responsibly in resolving his delinquent debts, aside from his actions in February 2013 with two companies to start to resolve his delinquent debts and tax issues. He has not shown significant progress and has not demonstrated that he has taken steps to avoid additional delinquent debt. His pattern of financial irresponsibility and his failure to take immediate action to resolve his debts or tax issues shows that he does not use good judgment and is not reliable. Applicant has not mitigated his case. He did not show that he does not owe the liens nor present sufficient documentation that he has addressed or resolved the delinquent debts.

Applicant failed to mitigate financial considerations security concern. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. A denial of his security clearance does not necessarily indicate anything adverse about an applicant's character or loyalty. It means that the individual has presented insufficient mitigation to meet the strict standards controlling access to classified information. Clearance is denied.

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.t:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge

