



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



In the matter of:)	
)	
)	ISCR Case No. 11-02594
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

05/03/2012

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, 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.

Statement of Case

On March 10, 2009, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On December 5, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant provided a notarized answer to the SOR, dated December 20, 2011, and requested that his case be determined on the written record. The Government

compiled its File of Relevant Material (FORM) on January 18, 2012. The FORM contained documents identified as Items 1 through 8. By letter dated January 25, 2012, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on February 3, 2012. His response was due on March 4, 2012. Applicant did not submit any information within the required time period. On April 25, 2012, the case was assigned to me for a decision.

Findings of Fact

The SOR contains eight allegations of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.h.). In his Answer to the SOR, Applicant admitted four allegations (SOR ¶¶ 1.a., 1.b., 1.c., and 1.f.). He denied SOR ¶¶ 1.d., 1.e., 1.g., and 1.h. Applicant's admissions are entered as findings of fact. (Item 1; Item 2.)

The facts in this case are established through the record provided by the Government and information provided by Applicant. The record evidence includes Applicant's e-QIP of March 10, 2009; official investigation and agency records; Applicant's responses to DOHA interrogatories;¹ and Applicant's credit reports of November 24, 2010, and October 12, 2011. (See Items 4 through 8.)

Applicant is 44 years old, unmarried, and without children. He is employed by a government contractor as a draftsman. He has worked for his present employer since August 2007. He was first investigated for a security clearance in 2002. (Item 5.)

The SOR alleges that Applicant owes eight delinquent debts totaling approximately \$24,803. They include a delinquent account in collection status to a communications company for \$165 (SOR ¶ 1.g.) and a \$5,282 delinquent account in collection status for consumer goods purchased in 2007 (SOR ¶ 1.a.). Several of Applicant's delinquent accounts arise from unpaid credit card debt: SOR ¶ 1.b., \$4,079; SOR ¶ 1.c., \$5,796; SOR ¶ 1.d., \$1,500; SOR ¶ 1.e., \$2,482; SOR ¶ 1.f., \$3,582; and SOR ¶ 1.h. \$1,917. Applicant's delinquent accounts are listed on his credit reports of November 2010 and October 2011. (Item 1; Item 7; Item 8.)

In his interview with an authorized investigator in December 2010, Applicant attributed his financial delinquencies to "not making enough income." He reported that he had engaged a debt consolidation service to assist him in paying his debts. In response to DOHA interrogatories in October 2011, he reported he had dismissed the debt consolidation service in August 2011, after he had made 15 monthly payments. He

¹ Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on December 8, 2010. In response to DOHA interrogatories, Applicant reviewed the investigator's report and provided additional information. On October 31, 2011, Applicant signed a statement that the investigator's report accurately reflected his interview. (Item 6.)

stated that he planned to contact his creditors directly to arrange resolution of his debts. (Item 6.)

In October 2011, in response to DOHA interrogatories, Applicant stated that he would settle the delinquent debts alleged at SOR ¶¶ 1.a., 1.b., 1.c., and 1.d. at a future date. He stated that he would settle the debt alleged at SOR ¶ 1.e. “right away.” In response to the SOR, Applicant provided documentation to corroborate his statement that he had resolved the debt alleged at SOR ¶ 1.e. (Item 4; Item 6.)

In his response to DOHA interrogatories, Applicant also stated he would resolve the delinquent debts alleged at SOR ¶¶ 1.f., 1.g., and 1.h. by using proceeds from his 401(k) account. In response to the SOR, he provided a report showing a balance in his 401(k) account of \$19,803.² He requested that he be given until January 2012 to resolve his delinquent debts. (Item 4; Item 6.)

In December 2010, Applicant reported a net monthly income of \$3,186 and total monthly expenses of \$2,492. Additionally, he reported paying \$151 each month to the debt consolidation service. His net monthly remainder at that time was \$543. (Item 6.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, 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, the administrative judge applies these 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

² In his interview with an authorized investigator in December 2010, Applicant reported the following assets: savings, \$600, a vehicle, \$1,000; and a 401(k) account with a balance of \$6,000. (Item 6.)

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, 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 in seeking 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 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 in this case. 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 documentation corroborating payment of one of the eight debts alleged on the SOR. The remaining seven debts are unresolved and total approximately \$22,321. He has been aware of the remaining debts alleged on the SOR since at least 2010, but he has failed to demonstrate that he has paid them or negotiated payment plans with his creditors. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

The 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, (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.” (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence that “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 initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated if “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.” (AG ¶ 20 (e)).

Applicant has a history of financial delinquencies. He attributes these delinquencies to not making enough income, suggesting that he may be living beyond his means. He has been steadily employed with his current employer since August 2007.

All of the debts alleged on the SOR appear on Applicant’s two credit reports. He admits four of the debts alleged on the SOR. He provided documentation to show payment of one of the four debts he denied. However, he provided no documentation to establish that he has made arrangements to pay or otherwise satisfy the remaining seven debts alleged on the SOR. He stated that he would pay those remaining debts at some unspecified time in the future.

Applicant has been steadily employed for the last four years. Since he is no longer making payments of \$151 each month to the debt consolidation firm, his net

monthly remainder is approximately \$694. The majority of his debts, including a relatively small debt of \$165, remain unresolved. While Applicant deserves credit for resolving one of his eight delinquent debts, he failed to demonstrate a credible and continuing good-faith effort to satisfy his delinquent debts. There is no evidence that his financial situation is under control. While AG ¶ 20(d) applies in partial mitigation, I conclude that AG ¶¶ 20(a), 20(b), 20(c) are not applicable in Applicant's case.³

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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. Applicant is a mature adult. His financial delinquencies are significant in number and in duration. He has been aware of them since at least 2010, when he was interviewed by an authorized investigator. He has a significant monthly net remainder that he could use to pay his delinquent debts. Applicant's inability or unwillingness to resolve his debts, even though he has the resources to do so, raises concerns about his trustworthiness, judgment, reliability, and ability to protect classified information.

Overall, the record evidence leaves me with doubts about Applicant's eligibility and suitability for a security clearance. I conclude that 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:

³ AG ¶ 20(e) does not apply to the facts of Applicant's case.

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.d.:	Against Applicant
Subparagraph 1.e.:	For Applicant
Subparagraphs 1.f. – 1.h.:	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.

Joan Caton Anthony
Administrative Judge