



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



In the matter of:)
)
) ISCR Case No. 11-04484
)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

05/16/2013

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated \$24,909 of delinquent debts between 2002 and 2003, and December 2007 and February 2009, as a consequence of his wife’s loss of employment. He provided evidence that in August 2012 he contracted with a company to dispute those debts. He failed to demonstrate that he timely made any good-faith efforts to resolve his debts, or demonstrate reliability or good judgment in addressing his financial obligations. Resulting security concerns were not mitigated. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Statement of Case

Applicant submitted a security clearance application (SF 86) on October 29, 2010. On July 20, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). The action was taken 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 effective within the DoD for SORs issued after September 1, 2006.

Applicant answered the SOR on October 25, 2012 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) Department Counsel submitted the Government's written case on February 14, 2013. A complete copy of the File of Relevant Material (FORM), containing eleven Items, was provided to Applicant on February 25, 2013. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM, but he did not do so. I received the case assignment on April 18, 2013.

Findings of Fact

In his response to the SOR, Applicant denied all 16 allegations, and submitted exhibits with his Answer. (Item 4.)

Applicant is a 62-year-old mechanic/electrician for a defense contractor. He has worked for this defense contractor since 1997, but at different locations. He served in the Navy from November 1969 to November 1973, and received an honorable discharge. He and his wife have been married for 42 years. They have two adult children. He has held a secret security clearance since 1998. (Item 5.)

In March 2009 a security investigator interviewed Applicant about his delinquent debts.¹ Applicant attributed the financial problems to the loss of his wife's income from 2002 to 2003, at which time he fell behind in timely paying his bills. He said he requested a copy of his credit bureau report (CBR) in January 2009, and started to resolve the delinquent debts with his creditors. He acknowledged that he was not familiar with some debts listed on the CBR. He said that his daughter was recently the victim of identity fraud, which caused additional financial difficulties. He intended to settle all of the delinquent accounts when he received settlement offers from the creditors. He never dealt with a credit counselor or debt negotiation company. (Item 6.)

In December 2010 a security investigator again interviewed Applicant about the delinquent debts listed on a more recent CBR. Applicant said his wife handled their bills. Applicant reviewed about 15 delinquent debts listed on a CBR with the security investigator. He was unfamiliar with some debts and unsure why others appeared on the CBR. He said he would seek credit assistance to help resolve the debts within the next 60 days. His monthly income was \$3,200 and expenses were \$2,100. While his wife was unemployed from December 2007 to February 2009, his family monthly income decreased to \$1,700, causing him to be late with bill payments. (Item 6.)

¹ This personal subject interview occurred prior to Applicant submitting his October 29, 2010 SF 86.

On June 2, 2012, Applicant completed and submitted a set of Interrogatories relating to the status of 18 delinquent debts. In his response regarding the status of those debts, Applicant stated that he was still disputing some of them. He was unable to locate some creditors and was still attempting to contact others. He was requesting information from certain creditors. None of the debts were paid. (Item 7.)

On August 15, 2012, Applicant entered into an agreement with a credit solutions company to provide him credit restoration, education, and consultation. The agreement made no mention of debt repayments, and required a processing fee of \$981, and a monthly fee of \$99. It was scheduled to begin on November 10, 2012, and be in effect for six months. (Item 4.)

Based on CBRs, dated February 2013, June 2012, November 2010, and March 2009, the SOR alleged 16 delinquent debts totaling \$24,909, which started becoming delinquent in 2005. Applicant provided no evidence that any of the debts are paid or resolved. In his Answer, he stated each debt would be disputed through the company he hired in August 2012. (Item 4.)

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 (AG) 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Since 2005, Applicant has been unable or unwilling to satisfy delinquent debts alleged in the SOR that total \$24,909. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant’s financial difficulties:

(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.

Applicant's delinquent debts began accumulating over seven years ago and continue to date. Because he failed to address them until recently, he did not demonstrate that such problems are unlikely to continue or recur. His reliability and trustworthiness in managing his financial obligations remain a concern. The evidence does not support the application of AG ¶ 20(a).

Applicant provided evidence that his financial problems arose because his wife was unemployed between 2002 and 2003, and December 2007 and February 2009, resulting in a loss of family income. Those were circumstances beyond his control. However, he did not provide documentation that he began to address any delinquent debts until August 2012, or otherwise acted responsibly while his income was decreasing during those years. That evidence is necessary for the full application of AG ¶ 20(b).

Applicant did not provide evidence that he personally participated in credit or other financial counseling with the company that he recently engaged to dispute his debts. He did not provide sufficient information or documentation to prove he is addressing his debts. There is insufficient evidence to establish clear indications that his delinquent debts are being resolved or under control. AG ¶ 20(c) is inapplicable.

Applicant did not submit proof that he made a good-faith effort to resolve any of the 16 delinquent debts listed on the SOR, including the small \$84 debt alleged in ¶ 1.c. AG ¶ 20(d) does not apply.

Although Applicant hired a company in August 2012 to dispute all SOR-listed debts, the contract was not scheduled to begin until November 2012, and there is no evidence that any SOR-listed debt was successfully disputed, paid or resolved. AG ¶ 20(e) has no application.

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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is 62-year-old man, who honorably served his country from 1969 to 1973. He has worked for the same defense contractor for about 15 years.

In March 2009 Applicant told a security investigator that he intended to resolve his delinquent debts. In December 2010, after submitting an SF 86, he told a security investigator that he would begin addressing the debts. In June 2012 he answered financial Interrogatories and stated that he was trying to resolve his debts. After receiving the SOR in July 2012, Applicant entered into a contract with a firm to dispute his debts. In February 2013 the Government notified him that the information he submitted regarding the resolution of delinquent debts to date was insufficient. Although Applicant has had knowledge of the Government's security concerns since March 2009, he has not taken actions to seriously address the debts for over four years. His inaction raises questions about his reliability and judgment. At this time, he has not established a track record for resolving his financial obligations.

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Overall, the record evidence leaves me with doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.p:	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.

SHARI DAM
Administrative Judge