



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-06799

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel

For Applicant: *Pro se*

02/25/2013

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

In an undated Statement of Reasons (SOR), the Department of Defense (DOD) enumerated security concerns arising under Guideline F (Financial Considerations) regarding Applicant's finances. 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 by the DOD on September 1, 2006.

Applicant's response to the SOR was notarized on September 3, 2012. He admitted three of the eight allegations raised in the SOR (¶¶ 1.a, 1.b, and 1.f) and requested a decision without hearing. On November 8, 2012, Department Counsel submitted a File of Relevant Material (FORM), which included 13 attached items. Applicant timely responded on December 7, 2012, with a file containing four additional documents. The case was assigned to me on January 11, 2013. Based on a review of the case file, I find Applicant failed to meet his burden regarding the security concerns raised in the SOR. Security clearance is denied.

Findings of Fact

Applicant is a 34-year-old linguist who has been supporting the United States military in that capacity since 2009. He was born and raised abroad, before immigrating to the United States in 2001. Applicant became a naturalized U.S. citizen in 2007, after purchasing a home in 2006. Due to ill health and a period of unemployment, Applicant fell behind on his mortgage and the bank foreclosed on the house in 2007. Shortly thereafter, Applicant sought out the aid of a debt consolidator. He has spent the past several years in sales positions and taking post-secondary level courses.

At issue in the SOR are eight alleged debts, of which Applicant admits three (SOR allegations ¶¶ 1.a [\$91,900], 1.b [\$85,200], and 1.f [unknown balance on mortgage account]).¹ The FORM and subsequent submissions focus almost exclusively on Applicant's various financial obligations, with scant information regarding the Applicant. Limited information is given regarding the creation and maintenance of the debts at issue. The debts set forth in the SOR are as follows:

1.a – Charged-off account for \$91,940. – Admitted. No documentary evidence of satisfaction.

1.b – Charged-off account for \$85,200. – Admitted. No documentary evidence of satisfaction.

1.c – Charged-off account for \$8,600. – Settled. Applicant settled this account for \$2,151 in January 2011.

1.d – Charged-off account for \$1,218. – Denied. Applicant denies that this debt is his. A settlement offer was extended by the creditor, but there is no evidence Applicant made the required payment to settle the debt. However, there is evidence that he paid \$549 on the account in September 2012.

1.e – Charged-off account for \$733. – Status unclear. Applicant wrote that this debt was previously paid. In Ex. 9 at page 4, Applicant also indicated that it had been previously paid, although no supporting documentation was offered. No documentary evidence indicating this debt has been fully addressed, satisfied, or been disputed as erroneous was offered.

1.f – Mortgage account that went to foreclosure, balance unspecified – Admitted. Applicant does not dispute that this account was foreclosed upon.

1.g – Charged-off account for \$862. – Settled. Applicant settled this debt with his payment of \$500 in February 2010.

¹ Aside from the unknown amount for the admitted debt at ¶ 1.f, the debts noted in the SOR cumulatively amount to approximately \$192,494 in delinquent debt.

1.h – Collection account for \$3,941. – Status unclear. Applicant stated in his Answer that this debt had been previously settled. He conceded that no documentation was attached to support his contention, but he wrote that this debt was paid in Ex. 9 at 4. However, he provided evidence that a payment of \$896.58 was made in January 2010. There is no additional documentary evidence, however, proving this debt has since been fully addressed, satisfied, or been disputed as erroneous.

As presented in his responses to the SOR and the FORM, Applicant's materials are difficult to match with the debts at issue for the purposes of establishing a paper-trail of progress on most of those debts. Some evidence of payments and offers to settle, for example, are offered, but without sufficient nexus on their face to link them with the accounts at issue. Similarly, multiple credit reports were referenced or offered without adequate narrative to explain their significance to the debts at issue. In addition, Applicant wrote that he has been working with a debt consolidation firm. He further wrote that "in regards to my financial accounts all have been paid to the best of my knowledge and it is on a current status except for my second mortgage. . . ." ² He was told not to "worry about the second mortgage because the first and second mortgage lenders will offset the balance once they auction the house."

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. The AG lists 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 over-arching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a 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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. It is an applicant's responsibility to present "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

² Response to the FORM, Dec 1, 2012, letter to DOHA.

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

something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.⁴

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ A security clearance denial 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

In this case, Guideline F is the appropriate guideline for consideration. Under that guideline, 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.⁸ The burden in these proceedings is placed squarely on an applicant. Here, Applicant admitted to SOR allegations 1.a, 1.b, and 1.f, which, by themselves, signify at least \$177,140 in delinquent debt. The status of several of the other debts at issue remains dubious. Under the circumstances, Financial Considerations Disqualifying Conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*) apply. With such conditions raised, it is left to Applicant to mitigate security concerns.

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, § 3.1(b) and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

⁸ AG ¶ 18.

Little is known about the debts at issue or Applicant's efforts to address them. Illness and unemployment apparently helped give rise to those debts, but there is scant information indicating what contemporaneous steps Applicant took to address them. Moreover, there is no indication of a past or current plan for addressing his debts, nor is there any meaningful narrative explaining the *ad hoc* payments he has thus far made, which were transacted between 2010 through 2012. In addition, Applicant stated that he has been working with a debt consolidation expert, but provided no documentary evidence as to what progress such efforts have yielded. At present, the evidence submitted demonstrates only occasional payments on some debts and an intentionally neglected mortgage situation, but it does not show a thoughtful plan for comprehensively addressing the debts at issue. At best, Financial Consideration Mitigating Condition AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.

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). 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. It is noted that Applicant is in his mid-30s. He came to this country in 2001, bought a house in 2006, became a naturalized U.S. citizen in 2007, then suffered from ill health and adverse financial circumstances. Little is known of this period; therefore, it is unclear what, if any, efforts were made to avoid or minimize his acquisition of delinquent debt.

Moreover, the record provides only limited insight into what efforts were exercised by the Applicant to address the eight debts at issue. He wrote that all of his debts have been paid. However, while there is evidence that two accounts were settled, the evidence is less clear with regard to the other non-mortgage accounts noted in the SOR. As for the mortgage accounts, which represent over \$177,000 in debt, there is no indication that they have been addressed, that Applicant has worked with his lenders, or done anything more than take a "wait and see" strategy. Without more information, the true extent of Applicant's progress cannot be fully assessed. Moreover, there is no evidence that the progress which has been made is the result of a specific plan, rather than a piecemeal solution to his financial issues.

This process does not require an Applicant to address each and every debt. It does, however, demand that an applicant devise a realistic and workable plan for repaying his delinquent debt, and evidence that the plan has been successfully

implemented. Applicant failed to meet his burden in this regard. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. 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.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Subparagraph: 1.e:	Against Applicant
Subparagraphs: 1.f-1.h:	For 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 access to classified information. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge