



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



In the matter of:)	
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Applicant for Security Clearance)	ISCR Case No. 11-06839

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: Pro se

01/30/2013

Decision

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

On June 5, 2012, the Department of Defense (DOD) issued to the above-referenced Applicant a Statement of Reasons (SOR). The SOR enumerated security concerns arising under Guideline F (Financial Considerations). DOD took action 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.

In an undated response, Applicant admitted 27 allegations and denied 4 allegations. He also requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. DOHA assigned the case to me on September 18, 2012. The parties agreed to a hearing date of October 23, 2012, and a notice setting the hearing for that date was issued on September 28, 2012.

The hearing was convened as scheduled. Applicant gave testimony and offered no documents. He was given until November 8, 2012, to submit any materials for consideration. The Government offered nine documents, which were accepted into the record without objection as exhibits (Exs.) 1-9. The transcript (Tr.) of the proceeding was received on November 1, 2012. On November 8, 2012, Applicant requested an

extension of time to submit materials. Noting no objection from the Government, I gave Applicant until November 20, 2012, to forward any relevant materials. A second extension was granted giving the Applicant until November 26, 2012, to forward any such submissions. On December 3, 2012, Applicant contacted Department Counsel to see if she was in receipt of materials he wrote were mailed on November 26, 2012.¹ Department Counsel responded that no materials had been received. She again advised Applicant that no materials had been received on December 11, 2012. I checked with the DOHA mailroom on December 18, 2012, and Applicant's materials were not to be found. On January 7, 2013, I checked with Department Counsel, who confirmed that she never received a mailing from Applicant and noted she had not heard from Applicant since December 7, 2012. With no materials received, I closed the record. Based on a review of the testimony, official case file, and exhibits, I find Applicant failed to meet his burden of mitigating security concerns related to financial considerations. Clearance is denied.

Findings of Fact

Applicant is a 48-year-old information technology (IT) specialist working in assets control systems. He has been in his current position for about two-and-a-half years. He earned a general equivalency degree (GED), completed multiple IT certifications, and has past work experience as an electrician. He is married. Applicant is the father of two children and two stepchildren.

Following a period of unemployment, Applicant accepted a position in 2007.² Soon thereafter, he found another position. He was then seriously injured in a car accident. The accident required him to stay in a hospital for almost two weeks, and led to his being out of work for between a year and a year-and-a-half, starting in late 2007 or early 2008.³ During his convalescence, he received no unemployment compensation, but he did receive about \$300 a week from his union.⁴ At the time, his wife was earning about \$25,000. Applicant cites to these facts as the origin of his current financial distress.⁵

After his convalescence, Applicant found a job and returned to the workforce in February 2010. He had numerous bills and loans to pay, including money he had borrowed for "rent and stuff like that."⁶ At the hearing, Applicant stated he is "just now starting to catch up," stating that he had "paid off mostly all of the bills, except the two

¹ E-mails, Blue File, Official Case File.

² Tr. 15.

³ Tr. 16.

⁴ Tr. 17.

⁵ Tr. 16.

⁶ Tr. 17.

that I couldn't find anywhere, and information on how to pay them off."⁷ He also stated that he is working with his state and the Internal Revenue Service (IRS) with regard to his taxes.⁸ Applicant arrived at the hearing without evidence of debt payment. He was initially given until November 8, 2012, to compile and forward evidence of debt payment and any other documents tending to show that he has addressed the debts at issue.⁹

Today, Applicant has a monthly "take home" sum of about \$4,200. His wife has a net monthly income of about \$1,200. The couple maintains a budget.¹⁰ Applicant and his wife both maintain one credit card, on which they each make regular \$30 monthly payments each month. After all expenses, Applicant has a net monthly remainder of about \$1,228 in disposable income.¹¹ Of that sum, he plans on remitting about \$182 every two weeks to the IRS, although that repayment plan was not scheduled to start until after the hearing. He has been working with a consumer tax assistance entity regarding his state and federal taxes, but there is no documentary evidence showing that he has received traditional financial counseling.

Of the 31 debts set forth in the SOR at allegations ¶¶ 1.a-1.ee, Applicant asserts that he has paid the debts noted at ¶¶ 1.a-1.n, 1.r-1.t, and 1.aa-1.bb; he denies knowledge of those debts cited at ¶¶ 1.x-1.z and 1.cc. He stated that he is working on a settlement through a third party to satisfy the debts noted at 1.o, 1.q, and 1.u-1.w. The debts noted at ¶¶ 1.dd-1.ee are related to a car repossession that Applicant claims has yet to be resolved. He states that the debt at SOR allegation ¶ 1.p is a duplicate entry for the debt at ¶ 1.o. In sum, the debts noted in the SOR, which range from \$38 to \$8,805, amount to approximately \$47,010 in delinquent debt. The debts at issue include sums owed to the IRS and his state's taxing authority. The debts are of varying ages, dating back as far as the early 2000s (i.e., the state tax issue). Applicant submitted no documentary evidence regarding any of the admitted debts, nor did he submit any materials regarding the refuted accounts.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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 the adjudicative process. The administrative judge's overarching

⁷ Tr. 17-18.

⁸ Some of Applicant's tax issues date back to the early 2000s. Tr. 51-53.

⁹ Tr. 18-27, 80-81. It was suggested that Applicant compile and sort his materials in a logical manner. He was reminded that the burden in these proceedings is placed on the applicant.

¹⁰ Tr. 72, referring to Ex. 3.

¹¹ Tr. 78-80.

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.” The administrative judge must consider all 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 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. . . .”¹² The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.¹³

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 those 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 (EO) 10865 states 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 EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified/sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁴ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹⁵

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

¹² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁴ *Id.*

¹⁵ *Id.*

Analysis

Guideline F - Financial Considerations

Under Guideline F, 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.¹⁶ It also states that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.¹⁷ Applicant admits that he acquired numerous obligations resulting in the acquisition of significant delinquent debt. This is sufficient to raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant points to a serious automobile accident and related recuperative time in 2007-2008 as the source for his recent financial distress. Although the facts show that Applicant's financial distress extends beyond that 2007-2008 time period, such circumstances are sufficient to invoke consideration of Financial Consideration Mitigating Condition 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*). In this case, however, Applicant failed to provide any documentary evidence indicating what, if any, efforts he or his wife employed during and following his convalescence to address the debts acquired, including evidence of any attempts to maintain contact with creditors, negotiate repayment plans, or the like. Therefore, it cannot be determined if Applicant acted responsibly under the circumstances.

Other mitigating conditions exist. For example –

AG ¶ 20(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*);

AG ¶ 20(d) (*the individual indicated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and

AG ¶ 20(e) (*the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and*

¹⁶ AG ¶ 18.

¹⁷ *Id.*

provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue).

However, Applicant provided no evidence that he received financial counseling or indicating that such counseling aided him in resolving his debts. Indeed, while it is Applicant's position that he paid the majority of the debts at issue, there is no documentary evidence showing that any of the debts have been paid, put into repayment, disputed, or otherwise addressed. This is despite the fact that the record from the October 23, 2012, hearing remained open until November 8, 2012, then until December 31, 2012, in the event Applicant was facing difficulty amassing his evidence, or transmittal issues may have impeded the delivery of Applicant's promised materials. Regardless, with no documentary evidence submitted, none of the remaining mitigating conditions apply.

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 the circumstances. An 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 a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes reasonable behavior in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

I considered the specific facts and circumstances in this case. Applicant is a mature and direct man who, in his mid-40s, was seriously injured in an accident and required protracted recuperative time between 2007 and 2008. Aid from his union and his wife's income were unable to cover his monthly obligations, and debt was acquired. Such circumstances, in the face of reasonable and responsible financial behavior, are amenable to mitigation under the AG.

In this case, however, Applicant claims to have satisfied the vast majority of the approximately \$47,000 in delinquent debt to which he admits. The dilemma here is that this process demands documentary evidence of such payment, as well as evidence of any such efforts made toward the negotiation, resolution, or dispute of accounts enumerated in an SOR. Here, Applicant provided no documentary evidence at the hearing, nor did he forward any such evidence after the hearing. Indeed, Applicant even failed to fully describe his plan for addressing the debt that remained,

Without some documentary evidence supporting his assertions that most of these debts have been paid or put into a repayment plan, I must conclude that no significant progress has been made on the debts at issue. As previously noted, the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. Applicant failed to mitigate financial considerations security concerns. 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.ee: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge