



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



In the matter of:)
)
) ISCR Case No. 11-08035
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

01/29/2013

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 27, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DoD acted under Executive Order (EO) 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 on September 1, 2006.

Applicant answered the SOR on July 20, 2012, and requested a hearing before an administrative judge. The case was assigned to me on October 15, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 13, 2012, and the hearing was convened as scheduled on December 4,

2012. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified and submitted exhibits (AE) A through E, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 17, 2012.

Findings of Fact

Applicant admitted SOR: ¶¶ 1.a and 1.c – 1.h. He denied ¶ 1.b. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 41-year-old employee of a defense contractor. He has worked for his current employer since 2003, with a short break sometime between 2005 and 2006. He is a systems engineer. He has taken some college courses. He is recently divorced for the second time. He has two children from his second marriage. He pays child support in the amount of \$680 per month. He does not have any military experience. He currently holds a secret clearance.¹

The SOR alleged eight delinquent debts totaling about \$106,000. The debts were listed on credit reports obtained on April 28, 2011, and April 17, 2012.²

Applicant's financial problems resulted from the purchase of an investment (rental) property in April 2006. He and a friend purchased the house for \$119,000. The mortgage payments on the property were \$1,125 per month. They were able to rent the property and the rental income covered most of the mortgage payments. He and his partner paid the difference. In December 2009, the pipes in the rental home froze and burst, causing about \$30,000 worth of damage to the home. The tenants moved out without paying four months' worth of rent. Applicant could not make the monthly mortgage payments and was unsuccessful in seeking a loan modification. The home went into foreclosure in May 2011. He has never been served with papers concerning the foreclosure action and is confused about the current status of the property. He knows someone has been living in the house for about one year because he has seen them there. He feels the foreclosure has ended his involvement with the property and does not intend to pay the remaining debt. During the time that he was experiencing financial difficulties with his rental property, he was also going through a rough time in his marriage.³

The debt alleged in SOR ¶ 1.a (\$573) is a judgment entered by a collection company. Applicant admitted that this debt originated from an unpaid medical bill. Applicant has made \$300 worth of payments over the last several months with the last

¹ Tr. at 7, 23, 43, 44; GE 1.

² GE 3-4.

³ Tr. at 34-35, 37, 46-47, 49-50; GE 2.

documented payment occurring in November 2012. He is making a good-faith effort to pay this debt.⁴

The debt alleged in SOR ¶ 1.b is an unidentified medical debt in the amount of \$722. Applicant denied this debt in his answer, but tried to check into it. He was unsuccessful because he could not identify the creditor. The debt does not appear on the most recent combined credit report submitted by Applicant. This debt is legitimately disputed.⁵

The debt alleged in SOR ¶ 1.c is a medical debt in the amount of \$751. Applicant admitted this debt and presented documentation showing six months' worth of payments (\$129.21), which paid the debt in full. This debt is resolved.⁶

The debt alleged in SOR ¶ 1.d is a second mortgage on the rental property described earlier in the delinquent amount of \$7,906. Applicant admitted this debt and indicated he has no intention of repaying this debt. This debt is unresolved.⁷

The debt alleged in SOR ¶ 1.e is the first mortgage on the rental property described earlier which is delinquent in the amount of \$94,899. Applicant admitted this debt. He testified that he does not intend to pay this debt. This debt is unresolved.⁸

The debts alleged in SOR ¶¶ 1.f and 1.g are delinquent medical debts in the amounts of \$62 and \$502 respectively. Applicant admitted both debts, and he supplied documentary proof that SOR ¶ 1.f was paid and that he is making payments on SOR ¶ 1.g. with the last payment occurring in October 2012. The debt listed in SOR ¶ 1.f is resolved and the debt listed in SOR ¶ 1.g is being resolved.⁹

The debt alleged in SOR ¶ 1.h is a delinquent collection account in the amount of \$584. Applicant admitted this debt and stated he was making payments on the debt, but then stopped. He did not present any documentation showing past payments. This debt is unresolved.¹⁰

Applicant stated that his yearly gross income was between \$86,000 and \$100,000, depending on bonuses he might receive. He also stated that he lives paycheck-to-paycheck and does not have any accumulated savings. He has not sought

⁴ Tr. at 50; AE D.

⁵ Tr. at 51; AE E.

⁶ Tr. at 51; AE B.

⁷ Tr. at 52-54.

⁸ Tr. at 41, 50; GE 2, 3, 4.

⁹ Tr. at 35; GE 2; AE 3.

¹⁰ Tr. at 54-55; GE 3, 4.

any financial counseling. He presented character letters from two friends and a company vice-president. All attest to his honesty, integrity, and good judgment.¹¹

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 list potentially disqualifying conditions and mitigating conditions that 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, administrative judges apply the 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 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 that 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 EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

¹¹ Tr. 56-58; AE A.

applicant concerned.” See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant has multiple debts that are delinquent. He was unable or unwilling to satisfy his obligations. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 debts are recent and multiple. Even though he paid a number of the smaller debts, the larger debts remain unpaid, and Applicant stated his intention not to pay those debts. His poor financial record and his failure to pay the larger debts cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant was impacted by the damage to his rental property caused by the pipes bursting and his tenant's nonpayment of rent. These were conditions beyond his control. However, for AG ¶ 20(b) to fully apply, Applicant must also have acted responsibly under the circumstances. While he did act responsibly to pay some of the smaller debts, he has done nothing to resolve the remaining debts. AG ¶ 20(b) is partially applicable.

Applicant did not receive financial counseling. The debts that have been paid and those that Applicant is making payments on are under control or being resolved. Both the first and second delinquent mortgage accounts are not resolved, nor is the debt listed at SOR ¶ 1.h. AG ¶ 20(c) partially applies to the paid debts and the debts where payments are being made. AG ¶ 20(d) applies to the paid debts and the debts with payment arrangements, but does not apply to the remaining debts since no good-faith effort was made toward paying those debts. Applicant disputed the debt listed in SOR ¶ 1.b and documented that dispute with a credit report that showed no debt. AG ¶ 20(e) applies to that debt. At this point, Applicant's finances remain a concern despite the presence of some mitigation.

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.

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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's current service to his employer and the difficulties he incurred with his rental property. I also considered this positive character evidence. I must also consider that beyond resolving his smaller obligations, he has done very little to resolve his large debts. His past financial track record reflects a troublesome financial history that causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

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.c:	For Applicant
Subparagraphs 1.d - 1.e:	Against Applicant
Subparagraphs 1.f - 1.g:	For Applicant
Subparagraph 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.

Robert E. Coacher
Administrative Judge