



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



In the matter of:)	
)	
)	ISCR Case No. 11-08739
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

05/20/2013

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated December 20, 2012. 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 in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on March 27, 2013. A notice of hearing was issued on April 3, 2013, scheduling the hearing for April 30, 2013. Government Exhibits (GX) 1-6 were admitted into evidence, without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-D, which were admitted without objection. I held the record open until May 14, 2013 for additional submissions. Applicant timely submitted a packet, which was marked as AX E. The transcript (Tr.) was received on May 8, 2013. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted one debt and denied the remaining factual allegations under Guideline F (Financial Considerations) with explanations.

Applicant is a 40-year-old systems engineer employed by a defense contractor. He graduated from high school in 1991 and attended college for two years. Applicant served in the U.S. Marine Corps from 1994 until 1999. He served on active duty in 2003 with the National Guard. After a four-year separation, Applicant divorced in 2010. He remarried in December 2011. He has two children. Both children are in his custody, but he still provides money to his ex-wife. Applicant has held a security clearance for almost 20 years. (GX 1) He has been with his current employer since June 2011.

The SOR alleges 11 debts totaling approximately \$42,000, which includes medical accounts, a judgment, and delinquent child support account (\$2,270). The credit reports confirm the debts.¹ (GX 4, 5, and 6)

Applicant explained that “many of the debts were a case of irresponsibility on my part.” He acknowledged that his financial problems began about ten years ago. (Tr. 27) He stated that as soon as he was employed with his current employer, he requested an automatic deduction (\$1,000) for child support arrears payments (\$250) be taken from his pay. (Tr. 24) He consulted his human resources office so that they could verify the amount to be deducted from his pay. (AX C) He does not believe he has any arrearage. Although an amount of \$200 is noted as past-due on his credit report. He was unemployed for two months before his current employment. Applicant initially thought he would obtain a debt-consolidation loan for the debts listed in the SOR, but he decided not to take that action. (Tr. 58)

When Applicant separated from his wife in 2005, he was responsible for two households. His wife was not working and he was paying the majority of the bills. However, he was late with payments on several accounts before the separation. He then paid the accounts as he could and would become current with the account. Applicant provided information that in 2011, he brought an account (not on the SOR) up-to-date by paying \$1,200. (AX B)

Applicant paid the medical accounts that are listed on the SOR. (1.f, 1.g, and 1.h) (AX E) Applicant claims he paid the judgment involving county taxes, but he did not provide any documentation. (1.i) Applicant claimed the account in SOR 1.k is paid and has been for several years. He noted this was for a timeshare. He did not provide any documentation for the account. As for the child support account, Applicant currently pays \$600 a month, which is deducted from his pay. (AX C) Applicant noted that many of the accounts that were delinquent do not appear on his February 2013 credit report. (AX A)

¹The Government acknowledged that SOR 1.c and 1.e are duplicates. The alleged debt is about \$24,000.

Applicant contacted the collection agency for the \$1,616 collection account in SOR 1.a. Applicant made a telephone call last week and asked for a payment plan. The settlement balance is \$1,103. A payment plan that consists of five payments of \$220.67 could start on June 30, 2013. Applicant noted that he could not start the payment plan in June and wanted to make the first payment in July. (AX E) The account has been in collection status since 2011. (Tr.34)

In 2012, Applicant hired the Lexington Law Firm to help him “clean up” his credit reports by having items removed. (Tr. 59) He pays them \$40 a month for their service. Applicant and his current wife attended a program at their church that uses a popular plan to monitor his credit and repair his credit score. He received financial counseling in that program. (Tr. 74) On May 6, 2013, he agreed to a settlement for the debt for a car repossession in SOR 1.c for \$2,400. He will be paying \$100 a month, which will begin in May 2013, lasting for 18 months. He believes the debt in SOR 1.e is a duplicate of 1.c. The Government does not refute this. (Tr. 44)

Applicant’s claim that SOR 1.b (\$9,378) has been resolved is not confirmed. He has not submitted any documentation that the 2011 corporate credit account has been paid in full or settled or in a payment plan. (Tr. 31) He asserts that the amount is only \$5,000. (Tr. 32)

The charged-off account in SOR 1.d (\$979) was opened in 2003. Applicant notes that it is resolved, but the credit report states that it was closed and placed in collection.

Applicant’s current salary is approximately \$124,000. His monthly net income is approximately \$3,223. His wife earns approximately \$1,000 a month. His net monthly remainder is about \$1,500. He uses a budget. He has a 401(k) plan. Applicant was candid when he stated he had not paid any delinquent debts since December 2012. He also acknowledged that he owes money for state taxes. (Tr. 88) He has not acquired any new credit card debt.

Applicant realizes that he has made many mistakes and understands the importance of the financial problems that cause a security concern. He has made efforts recently to correct the situation. He had focused on the fact that some delinquent debts were no longer on his credit reports, He is now focusing on trying to settle the delinquent accounts.

Policies

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. 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 overarching 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.” 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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. . . .”² The burden of proof is something less than a preponderance of evidence.³ 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 protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 The decision to deny an individual a security clearance 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.

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

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

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

⁷ *Id.*

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admits that he has several delinquent debts. Given the fact that one of the debts (1.e) listed in the SOR is a duplicate, the current amount is approximately \$24,000. He admitted that he was not always responsible with his finances. The debts are old. His credit reports confirm the debts. Consequently, the evidence is sufficient to raise disqualifying condition ¶ 19(a), and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant acknowledged financial difficulty for the past ten years. He was candid when he noted that he was irresponsible in some ways. The delinquent debts occurred both before and after his marital separation and divorce. He admitted that he has procrastinated in resolving some of them. He paid small debts recently. He claims he has paid other debts, but has no documentation to confirm his assertion. He recently

started a payment plan for one debt, and has made the first payment. He received financial counseling. Given his substantial net monthly remainder, Applicant has made some efforts recently to pay his creditors. He also paid some accounts that were not listed on the SOR. He owes state taxes that have not been paid. The four debts alleged in the SOR (1.a,1.b,1.d, and 1.k) total \$12,473. Applicant has not provided any documentation that he has paid any of these debts. He has a settlement agreement that notes a payment plan for 18 months. He submitted a post-hearing submission that he has made the first payment of \$400 as an initial payment on the debt in SOR 1.c . The payments for all the medical debts have not been substantiated. I find that the financial considerations concerns are not mitigated.

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):

- (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. 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. Applicant is a 40-year-old employee of defense contractor who has held a security clearance for almost 20 years. He served in the military, and he has worked for the Government for 20 years. Applicant has no recorded negative work incidents. His marital separation and divorce impacted his finances. He acknowledged that the past ten years have been difficult. He disclosed his delinquent debt on his security clearance application. He and his current wife attended financial counseling. He has paid some small medical bills recently, but he did not provide documentation. He disclosed his delinquent debts in his security clearance application.

Applicant did not meet his burden of proof. He has not provided sufficient evidence to show that he has addressed the financial issues at hand. Applicant has unresolved state taxes as well. He acknowledged his irresponsibility and cannot receive full credit for circumstances beyond his control. He has started to act more responsibly,

but he has not shown a sufficient track record of debt repayment to mitigate all security concerns. Any doubt must be resolved in favor of the government. He has not mitigated the security concerns under the financial considerations guideline.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Duplicate Debt
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge