



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



In the matter of:)	
)	
)	ISCR Case: 11-09668
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

10/02/2013

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated approximately \$44,000 of delinquent debt since 2005. He provided evidence that he paid two delinquent debts and is resolving about \$18,000 of debt through a repayment plan over another two years. Approximately \$11,500 of delinquent debts remains unaddressed, including an unpaid state income tax lien from 2005 that was settled for a lesser amount in early 2013, and student loans. He failed to demonstrate that he is reliable in addressing his financial delinquencies. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On April 26, 2011, Applicant submitted a security clearance application (SF-86). On October 12, 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 November 12, 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 July 15, 2013. A complete copy of the File of Relevant Material (FORM), containing nine Items, was provided to Applicant and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on July 26, 2013, and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA). He provided additional information in response to the FORM within the 30-day period. I received the case assignment on September 12, 2013, and marked Applicant's submission as Applicant Exhibit (AE) A.

Findings of Fact

In his response to the SOR, Applicant admitted the allegations contained in SOR ¶¶ 1.b, 1.c, 1.d, 1.e, 1.f, and 1.g. He denied those alleged in SOR ¶¶ 1.a and 1.h, because he asserted they are his wife's debts. He submitted some documents with his Answer. (Item 4.)

Applicant is a 46-year-old aircraft handler for a defense contractor, where he has been employed since April 2011. He is married and has two children, ages 18 and 5. He served in the U.S. Navy from April 1985 to April 2005, at which time he retired with an honorable discharge. He held a security clearance while in the Navy. His wife is a registered nurse and currently working.

After leaving the Navy, Applicant worked as a commercial truck driver until he started a position with his present employer. He has a history of financial problems. He attributed them to three factors: his wife's loss of employment in 2007; his unemployment from June 2010 to February 2011; and his young daughter's medical condition requiring treatment and special education. (Item 4.)

Applicant filed three Chapter 13 bankruptcy petitions in an attempt to resolve defaulted home mortgages, his wife's defaulted student loans, his daughter's medical expenses, and credit card debts. In September 2007 he filed for bankruptcy to resolve about \$250,000 of delinquent debts. In July 2009 he filed a petition to resolve \$230,000 of debts. In April 2010 he filed a petition to resolve \$250,000 of debts. Because he was unable to afford the required monthly payments on the bankruptcy repayment plans, the bankruptcies were dismissed. (Items 6, 8.)

In April 2011 Applicant submitted a SF-86. In May 2011 a security investigator interviewed Applicant about his background and delinquent debts. (Item 6.) On September 26, 2012, he entered into a debt consolidation repayment plan with a company to resolve four delinquent debts totaling \$22,517. DOHA issued an SOR on October 12, 2012. In November 2012 he began making monthly payments of \$383¹ on the repayment plan. According to the terms of his consolidation agreement, he will make those payments for 36 months. In his response to the FORM (AE A), he stated that he had paid \$4,364 toward the plan. He did not submit proof confirming those payments or the dates of those payments.

Based on credit bureau reports (CBR), dated May 2011 and August 2012, the SOR alleged eight delinquent debts totaling \$44,937 and dating back to 2005. The status of each listed debt is as follows:

1. (¶ 1.a) The state income tax lien, listed in the amount of \$10,756, was settled in March 2012 for \$1,075. During his March 2011 interview, the preceding year, Applicant stated that his wife did not pay her state income taxes for 2005 due to the lack of funds because of his subsequent layoff. He told the investigator that he would speak to his wife about the status of the tax debt as he wanted to resolve it. (Item 6 at 6.) In his November 2012 Answer to the SOR, he wrote that his wife was “working out a payment plan” with the state revenue department. This debt remains unpaid. (Item 4 at 1, 5.)

2. (¶ 1.b) The credit card debt of \$724 is included in Applicant’s September 2012 repayment plan. It is being resolved.

3. (¶ 1.c) The \$15,665 personal loan for expenses related to his daughter’s medical problems is included in the repayment plan. It is being resolved. (Item 4.)

4. (¶ 1.d) The \$8,733 debt for an automobile repossession became delinquent in 2010. (Item 8.) In his September 17, 2012 Interrogatories, Applicant said he intended to start making monthly payments on the debt at the end of September 2012. (Item 7 at 6.) There is no evidence that he contacted the creditor or began making payments. It remains unresolved.

5. (¶ 1.e) The \$566 debt owed to an electric company was paid in full in March 2013. (AE A.)

6. (¶ 1.f) The \$6,095 debt owed on a credit card is included in Applicant’s repayment plan. The balance was \$5,300 in November 2012 when he submitted his Answer. It is being resolved. (Item 4.)

7. (¶ 1.g) The \$592 debt owed to a credit card company was included in Applicant’s payment plan. It was paid in May 2013. (AE A.)

¹ According to the repayment plan, Applicant and his wife agreed to pay \$383 a month for 36 months to resolve the four debts listed in the plan beginning in October 2012. (AE A.)

8. (¶ 1.h) The \$1,788 student loan debt remains unresolved. Applicant stated in his September 2012 Interrogatories that this is his wife's debt and she would set up a payment plan. He did not submit evidence to verifying that the matter is being paid or is now resolved. (Item 4, 7.)

Five of Applicant's SOR-listed debts totaled \$23,083, four of which are included in a repayment plan. Applicant has paid \$4,930 toward the resolution of those five debts, leaving a balance of \$18,153. Three delinquent debts remain unaddressed and unresolved: a \$10,756 income tax debt for 2005 settled in March 2012 for \$1,075; an automobile debt of \$8,733 from 2010; and an outstanding \$1,788 student loan. Those three debts now total \$11,596. In summary, his outstanding delinquent debts totaled \$29,644 as of July 2013 when he submitted a final response to the FORM.

Applicant provided a copy of the budget that he submitted with his debt consolidation agreement at the end of September 2012. He and his wife had an approximate annual income of at least \$100,000, with a net monthly income of \$8,100 in 2012. Their expenses were \$7,798, and included a \$3,500 mortgage payment, and a \$383 payment on their debt agreement, leaving about \$300 surplus at the end of the month. He had submitted an earlier budget with his September 17, 2012 Interrogatories that included a mortgage payment of \$1,500 to \$2,000, leaving a remainder of about \$2,000. In his July 2013 response to the FORM, he indicated that he paid \$11,215 toward a mortgage delinquency and that the mortgage was current as of May 2013. The monthly mortgage payment appears to be \$1,080, which verified his monthly surplus of over \$2,000. (AE A.) He submitted evidence that in July 2012 he paid a non-listed SOR debt for \$2,459. (Item 7.) Applicant did not submit evidence of participation in financial or credit counseling.

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 describing his judgment, morality, trustworthiness, integrity, 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.

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 accumulating delinquent debts that he was unable or unwilling to satisfy until September 2012. 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 in 2005 with an income tax debt, most of which continue to date. Because he has failed to adequately address the debts over time, he did not demonstrate that such problems are unlikely to continue or recur. His reliability and trustworthiness in managing delinquent debts remain a concern. The evidence does not support the application of AG ¶ 20(a).

Applicant provided evidence that his financial problems arose because he and his wife encountered periods of unemployment and unusual medical expenses related to his child's physical condition. Those were circumstances beyond his control. He provided some evidence that he unsuccessfully attempted to responsibly address his delinquent debts by filing Chapter 13 bankruptcies in 2007, 2009, and 2010. He did not begin addressing them again until September 2012. AG ¶ 20(b) has some application.

Applicant did not provide evidence that he participated in credit or financial counseling. His documents indicate that he paid or resolved \$15,293 of the \$44,937 SOR-listed delinquent debts, approximately one-third, since September 2012. Three debts remain in the payment plan and are scheduled to be paid over the next two years. Three debts remain unaddressed and there is no evidence as to Applicant's timeline for resolving them. Hence, AG ¶ 20(c) has only partial application, because there are not clear indications that the problems are under control.

Applicant submitted proof that two delinquent debts are now paid and three are being resolved through a repayment plan. His actions as to those five debts demonstrate a good-faith effort to resolve debts. Some mitigation under AG ¶ 20(d) was established as to those debts.

There is no evidence that Applicant had a reasonable basis to dispute any delinquent debt and successfully resolved it through the dispute process. 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 a 46-year-old man, who honorably served this country for twenty years, during which time he held a security clearance after going through a security clearance investigation on more than one occasion.

Since April 2011 Applicant has been working for a defense contractor. In May 2011 he discussed several delinquent accounts with a security investigator. He indicated that he intended to address the 2005 unpaid tax lien, student loans, and an automobile repossession. In September 2012 Applicant answered Interrogatories about the status of those three delinquent debts and indicated that he was going to start paying the automobile loan that month, and that his wife was working out payments on the other two loans. As of July 2013, when he submitted his response to the FORM, those three debts continue to be unresolved. Although he had knowledge of the Government's financial security concerns two years ago and has been earning a good salary since then, he presented no evidence that he has taken action to responsibly address the eight-year-old tax debt and a small outstanding student loan. He also submitted two budgets from September 2012 that list conflicting mortgage amounts without an explanation for the discrepancy, further raising questions about his personal finances, reliability, and judgment. One of those budgets listed a monthly surplus of about \$2,000, which monies could have been used to address unpaid taxes and student loans.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 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.

SHARI DAM
Administrative Judge