



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



In the matter of:)	
)	
)	ISCR Case No. 11-11574
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

04/29/2013

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On November 16, 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 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 DoD on September 1, 2006.

Applicant answered the SOR on December 3, 2012, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on January 31, 2013. The FORM was mailed to Applicant

and he received it on February 14, 2013. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He chose not to respond. The case was assigned to me on April 16, 2013.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 49 years old. He is married and has three grown children. He has worked for his current employer, a defense contractor, since April 2011. He has a high school education acquired through completion of a general educational development (GED) course. He served 20 years in his state's National Guard and received an honorable discharge in 2005. He currently holds a security clearance.¹

The debts listed in the SOR are supported by credit reports dated January 2013, September 2012, and June 2011. The SOR sets out nine debts amounting to about \$36,868. Applicant's finances became a concern in 2009 after his wife was laid off from her full-time job and he was earning less from his position as a result of the turndown in the economy. His wife received about \$130 per week as unemployment insurance for an unknown period. With less income available to him, Applicant began using credit cards to pay for household bills and groceries. He was out of work, without pay, for a three-week period because of a medical condition (date of this incident is not in the record) and is awaiting a lump sum settlement from his disability insurance provider. His wife is still seeking full-time employment. He contacted an on-line credit consolidation company to seek assistance, but because their \$500 monthly fee was too high, he did not pursue the company's assistance.²

The delinquent debt alleged in SOR ¶ 1.a is a judgment accruing from a credit card account in the amount of \$10,373. The date of the last action associated with this account was in September 2008. This debt is unresolved.³

The delinquent debt alleged in SOR ¶ 1.b is a credit card account in the amount of \$1,963. The date of the last action associated with this account was in July 2009. This debt is unresolved.⁴

¹ Items 4-6.

² Items 4, 6.

³ Items 6, 9.

⁴ Item 8.

The delinquent debt alleged in SOR ¶ 1.c is a medical collection account in the amount of \$663. The date of the last action associated with this account was in May 2011. This debt is unresolved.⁵

The delinquent debt alleged in SOR ¶ 1.d is a credit card account in the amount of \$6,906. The date of the last action associated with this account was in February 2009. This debt is unresolved.⁶

The delinquent debts alleged in SOR ¶¶ 1.e and 1.f are for two credit card accounts with the same creditor in the amount of \$3,300 each.⁷ The date of the last action associated with these accounts was in March 2009. These debts are unresolved.⁸

The delinquent debt alleged in SOR ¶ 1.g is a credit card account in the amount of \$7,502. The date of the last action associated with this account was in February 2009. This debt is unresolved.⁹

The delinquent debt alleged in SOR ¶ 1.h is a collection account in the amount of \$1,610. This debt is a duplicate of the debt listed in SOR ¶ 1.b. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor.¹⁰

The delinquent debt alleged in SOR ¶ 1.i is a consumer charge account in the amount of \$1,251. The date of the last action associated with this account was in April 2009. This debt is unresolved.¹¹

In September 2012, Applicant prepared a personal financial statement listing his net monthly income at about \$3,238, his total monthly expenses at about \$3,121, and a monthly remainder of about \$117. When he asked to provide the current status of all of his debts, he stated, "I am currently concentrating on catching up and or getting ahead on all my current obligations such as mortgage, car payments, etc."¹²

⁵ Item 9.

⁶ Item 9.

⁷ Items 8 and 9 both list the amount of the debts as \$3,300 and \$3,600 respectively. The \$3,300 figure will be used for both debts since that is the amount for which Applicant is on notice.

⁸ Items 8-9.

⁹ Item 9.

¹⁰ Items 8-9. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice).

¹¹ Item 7.

¹² Item 6.

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, which are 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 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, 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, and has the ultimate burden of persuasion to obtain a favorable security 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 an 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

With the exception of the duplicate debt listed in SOR ¶ 1.h, all of Applicant's debts remain unresolved. He did not provide sufficient evidence to show that the debts are unlikely to recur. I find mitigating condition AG ¶ 20(a) does not apply. Applicant provided evidence that his wife lost her job in 2009, that his income was reduced due to the economy, and that he was placed into a non-pay status due to a medical condition for three weeks, which all contributed to his financial problems. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. Although he contacted a credit consolidation company to explore its ability to help him with his debts, he did not hire it because of the cost involved. Therefore, he failed to produce evidence that he was taking any action on his debts. This demonstrates a lack of responsible behavior. I find AG ¶ 20(b) partially applies. Applicant failed to present evidence of financial counseling, and while one debt was duplicated, there is no clear evidence that Applicant's financial problems are being resolved or under control because the debts remain unpaid. There is no evidence that he has made a good-faith effort to pay the debts. I find AG ¶¶ 20(c) and 20(d) do not apply.

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 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's 20 years of service in the National Guard and the impact his wife's job loss had on his debt situation. However, he has not shown a track record of financial stability. His financial worksheet shows that he barely has a remainder left after paying all his current obligations, but an insufficient amount to address his past debts listed in the SOR. The record lacks evidence that Applicant has made an overall good-faith effort to resolve his debts. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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.g	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	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