



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



In the matter of:)
)
-----) ISCR Case No. 11-11920
)
Applicant for Security Clearance)

Appearances

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

08/27/2014

Decision

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

Applicant failed to mitigate security concerns related to Guideline F. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On March 14, 2014, 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 (AG) effective within the DOD on September 1, 2006.

In a letter notarized on April 8, 2014, Applicant admitted three of the 13 allegations and requested a hearing before an administrative judge. This represents an admission to about \$2,000 of the over \$26,000 in delinquent debt alleged. The case was assigned to me on May 5, 2014. The Defense Office of Hearings and Appeals

(DOHA) issued a notice of hearing on May 9, 2014, setting the hearing for May 29, 2014. The hearing was convened as scheduled.

The Government offered Exhibits (Exs) 1-6, which were accepted into the record without objection. Applicant offered testimony and 14 documents, which were accepted without objection as Exs. A-N. The transcript of the proceeding (Tr.) was received on June 9, 2014. Also on June 9, 2014, Department Counsel forwarded seven additional documents from Applicant without objection. They were accepted into the record as Exs. 0-U. The record was then closed.

Findings of Fact

Applicant is a 53-year-old security officer who has worked for the same employer for the past 11 years. He completed three years of post-secondary education. He has three children and is presently engaged to be married.

In 2006, Applicant had manageable financial issues. (Tr. 84) He decided to pursue an associate's degree to earn the proper certification for pursuing a bachelor's degree in homeland security. He learned of a local institution offering an abbreviated program yielding a similar certification for only about \$10,000. He took out student loans, enrolled in the program, and completed about six months of study. Applicant then found a job and made payments on his student loans until November 2007, when he lost his position. At that point, he only had a \$10 an hour part-time position on which to rely for income. Consequently, he abandoned his plans to seek a bachelor's degree in homeland security.

In 2009, Applicant's part-time employer offered him a full-time position that included superior pay and a company car. Applicant and his son bought a house in his son's name because he had better credit. Applicant paid most of the mortgage payments, about \$2,300 a month. (Tr. 86) By 2010, Applicant was reduced in hours to being a part-time employee again. Applicant and his son eventually abandoned the property when they no longer could afford it. (Tr. 23) It ultimately went into foreclosure. (Tr. 87) Other related debts were neglected, including Applicant's student loans. (Tr. 23-24) Applicant became a full-time employee again in 2011, but at a reduced rate of about \$14.50 an hour. This helped him pay some, but not all, of his obligations. Around this time, Applicant divorced his first wife. He produced no evidence indicating how this divorce impacted his finances.

In 2012, Applicant reviewed his student loans, which had risen from a debt of \$10,000 to one of about \$24,000 due to fees, costs, and interest. That balance kept rising. The processing entity for the loans also kept changing. The changes regarding the accounts were very confusing. Meanwhile, by 2013, the potential of defense sequestration and employment insecurity increased. (Tr. 27-28) Applicant was retained by his employer, but his salary was cut again. This most recent cut prevented him from instituting more than initial measures to address his student loans.

Around the same time, Applicant received notice from his county that he owed taxes from 2009. Applicant denied having any past-due tax liability, but a recent audit showed that mistakes by his accountant between 2007 and 2009 resulted in a balance due. The resultant obligation was due in 30 days. Soon thereafter, he learned from the Internal Revenue Service (IRS) that he also owed federal taxes from 2009. Applicant told his employer, which withheld all the money it could on his behalf for the federal and county tax garnishments. Applicant borrowed money from some friends and other sources, but it was insufficient to cover all of his obligations and home expenses.

The debts at issue in the SOR currently are as follows:

1.a - \$472 – Unpaid/denied. Applicant asserts that this utility bill belongs to his son from when they shared living in the same house. Applicant failed, however, to produce any documentary evidence showing he disputed this credit report entry with either the utility company or the credit reporting bureau, or paid the balance. (Tr. 62-64)

1.b, – \$12,000 – Status unclear. This student loan is handled by a publicly-traded U.S. corporation that originates, services, and collects student loans. Applicant's latest activities with this creditor go back to at least April 2013. One recent payment toward this debt was shown as having been made. (Tr. 98) The evidence does not include a history of past transactions. (Ex. R) Applicant points to documentation to show that the debts at 1.g (\$2,603) and 1.h (\$4,045) have also been addressed. Those student loan-related debts, however, belonged to a nonprofit corporation before being turned over to a banking entity for collection. (Tr. 57) There is no evidence of a severance or reconsolidation of the loans that ever connected the publicly-traded corporation with the nonprofit corporation. A more direct nexus is needed to show that Applicant's assertions are correct. (Tr. 57-58)

1.c - \$3,830 - Unpaid. Applicant claimed that he recently made one payment of \$60 on a purported repayment plan toward this debt. No evidence of either the transaction or the repayment plan, however, was submitted. (Tr. 79-80; Ex. N)

1.d - \$117 – Unpaid. No evidence of payment. Despite a copy of a settlement offer, there is no evidence that the offer has been accepted and satisfied. (Tr. 65)

1.e - \$162 – Paid. (Tr. 66; Ex. E)

1.f - \$1,130 – Unpaid. Applicant intends to settle this debt. (Tr. 67) Ex. U does not reflect sufficient information to show a payment was made on this account.

1.g – 1-h – Unpaid - See *above* at 1.b.

1.i - \$105 – Paid. Ex. T, dated May 16, 2014.

1.j – \$621 – Unpaid. Applicant failed to provide evidence that this telecommunications account has been satisfied. (Tr. 69-70)

1.k - \$182 – Paid. Evidence was provided showing that this overdue book charge from a local library was satisfied in May 2014. (Tr. 70-72)

1.l - \$65 – Unpaid. Applicant denies that this debt is his, but he did not provide evidence that he has formally disputed the credit report entry with either the entity or the credit reporting bureau. (Tr. 71-73) At hearing, Applicant stated that he would pay the balance, but no evidence of payment was forthcoming.

1.m - \$681 – Paid. Applicant provided evidence he has no outstanding balance with the state at issue. (Tr. 75-76-Ex. Q) It appears to have been satisfied through garnishment in 2012.

Applicant's current finances are unclear, but indicate that he is not acquiring new delinquent debt. In 2013, his financial sheet reflected a monthly net remainder of about \$1,300, but it did not reflect any outstanding debts. There is no documentary evidence showing that he received financial counseling that has successfully helped him address his debts. Applicant did not present a clear, practical, and workable plan for addressing the remainder of his delinquent debts, nor did he present evidence to show that such a plan has been successfully implemented.

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. Likewise, I have not drawn 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, 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 the applicant may deliberately or inadvertently fail to safeguard 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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has multiple delinquent debts, amounting to about \$26,000. While his oral testimony indicated a significant amount of progress had been made on the delinquent debts at issue, the documentary evidence offered shows minimal effort toward addressing those debts. Moreover, several of those efforts appear to have occurred only after the issuance of the SOR. Such facts are sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and
AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance related security concerns:

AG ¶ 20(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;

AG ¶ 20(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;

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 initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) 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 financial problems began by 2008. Fluctuations in his wages beyond his control affected his income, which, in turn, adversely affected his ability to meet all of his financial obligations. Therefore, AG ¶ 20(b) potentially applies. There is scant documentary evidence, however, showing that he acted responsibly under the circumstances. Moreover, there is little documented evidence showing that he endeavored to work with his creditors, mitigate expenses in a responsible manner, or generate either additional or more stable employment until last year. Most of what has been done to address his delinquent debts has been *ad hoc* and very recent, principally the satisfaction of his \$681 tax burden through garnishment in 2012 noted at 1.m, the \$162 referenced at 1.e, and the recent payments for debts 1.i (\$105) and 1.k (\$182). Applicant's methodology for choosing these creditors and making these payments is unclear. Testimony of additional payments to other cited creditors was unsupported. Therefore, neither AG ¶ 20(a) nor AG ¶ 20(b) apply.

There is no evidence that Applicant received financial counseling. Moreover, the evidence shows that his efforts addressing these debts have been largely haphazard and relatively minor in light of his financial resources. Further, there is no evidence that he has formally disputed any of his debts. AG ¶ 20(c) through AG ¶ 20(e) 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 relevant circumstances. The 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 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 the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment or emphasis.

Applicant is a mature, credible, and earnest man who has maintained his current position for over a decade. He has pursued post-secondary education successfully. He made payments on his son's house until the monthly expenses became too onerous. When he lost his primary job, he depended on his part-time employment for income until that position became full-time. He endured multiple ups and downs with his income at that work over several years.

In his testimony, Applicant articulated a recent and *ad hoc*, but arguably productive, method for addressing the debts at issue. Applicant's problem in this case is mostly an issue of documentary evidence. He has been given credit for those accounts for which documentary evidence of satisfaction or action was presented. However, despite a period of time after the hearing to submit additional materials, only four more documents were submitted.

Ultimately, while this process does not require an applicant to satisfy all debts at issue, it does require a showing that an applicant has devised a workable and realistic payment plan or scheme to satisfy his debts. In addition, it requires a documented showing that such a plan or scheme has been successfully implemented. Here, exempting consideration of the confused status of Applicant's student loans, Applicant's *ad hoc* payments of only about \$1,100 and unsubstantiated claims of payment or repayment plans sustain 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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For 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. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge