



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



In the matter of:)	
)	
)	ISCR Case No. 11-12040
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'i Garcia, Esq., Department Counsel
For Applicant: *Pro se*

November 1, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant filed Chapter 13 bankruptcy in 2007, but the bankruptcy was dismissed a couple months after he filed it. He has eight delinquent debts totaling \$29,599 identified on the Statement of Reasons (SOR). Applicant failed to produce sufficient documentation that his debts have been addressed or are otherwise satisfied. He has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 9, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F, Financial Considerations. The action was taken 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 on September 1, 2006.

Applicant answered the Statement of Reasons on June 14, 2013 (Answer). In his Answer, Applicant elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on September 13, 2013. A complete copy of the file of relevant material (FORM) was received by Applicant on September 24, 2013. He was afforded 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant did not submit any information within that time. The case was assigned to me on October 30, 2013.

Findings of Fact

Applicant is 41 years old. He earned a bachelor's degree in May 2010. He has been working for his current employer since February 1998. He is divorced and has two children. (Item 5.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR identified eight delinquent debts totaling \$29,599. He also filed for Chapter 13 bankruptcy in September 2007; however, the case was dismissed in November 2007. Applicant's debts appear in credit reports in the FORM. Applicant admitted SOR allegations ¶¶ 1.a through 1.e, 1.g, and 1.i. He denied SOR allegations ¶¶ 1.f and 1.h. (Answer; Items 4 through 11.)

Applicant attributes his debts to several factors: his daughter's medical expenses that began accumulating in approximately January 2004; his divorce in May 2008 as a result of his infidelity; his ex-wife's poor spending habits during their marriage; his decision to reside with his ex-wife after their divorce, despite her on-going poor spending habits that he was not aware of; and a decrease in work hours due to the slow economy. He acknowledged that he "did not stay on top of [his] finances." (Item 6; Item 7.)

His debts are as follows:

Applicant is indebted on a delinquent medical account in the amount of \$269 (as alleged in SOR ¶ 1.a). This debt has been delinquent since January 2012. Applicant indicated he arranged payments on this account, but he failed to introduce documentation to show he followed through on this promise. It remains unsatisfied. (Answer; Item 7; Item 10; Item 11.)

Applicant is indebted on a delinquent account in the amount of \$60 (as alleged in SOR ¶ 1.b). This debt has been delinquent since July 2008. It remains unsatisfied. (Item 7; Item 10; Item 11.)

Applicant is indebted on a delinquent account in the amount of \$2,047 (as alleged in SOR ¶ 1.c). This debt has been delinquent since January 2007. Applicant

indicated he was making payment arrangements with this creditor, but he failed to submit any evidence he followed through with his stated intent. This debt remains unsatisfied. (Answer; Item 7; Item 10; Item 11.)

Applicant is indebted on a delinquent credit card account in the amount of \$7,026 (as alleged in SOR ¶ 1.d). This debt has been delinquent since May 2011. Applicant indicated that he is paying this debt through payments of \$351.34 by automatic deductions from his bank account on a monthly basis for 20 months. However, he failed to produce documentation of any payments. This debt remains unsatisfied. (Answer; Item 6; Item 7; Item 10; Item 11.)

Applicant is indebted on a repossessed automobile in the amount of \$10,131 (as alleged in SOR ¶ 1.e). Applicant indicated he was attempting to make payment arrangements with this creditor; however, he produced no documentation to show he had made any payments. This debt has been delinquent since July 2012. It remains unsatisfied. (Answer; Item 7; Item 10; Item 11.)

Applicant is indebted on a second repossessed automobile in the amount of \$8,192 (as alleged in SOR ¶ 1.f). This debt has been delinquent since December 2011. Applicant denied responsibility for this debt because the vehicle belonged to his ex-wife. It remains unsatisfied. (Answer; Item 7; Item 10; Item 11.)

Applicant is indebted on a delinquent account in the amount of \$130 (as alleged in SOR ¶ 1.g). Applicant claims this debt is a duplicate of the debt alleged in SOR ¶ 1.a, but they have different account numbers and 1.a is more than double this amount. This debt remains unsatisfied. . (Answer; Item 7; Item 11.)

Applicant is indebted on a delinquent account in the amount of \$1,744 (as alleged in SOR ¶ 1.h). This debt has been delinquent since May 2012. According to Applicant's credit report, this account was reported 30 days past due six times or more. Applicant claimed that this debt was paid through garnishment of his wages; however, he failed to submit documentation to substantiate his claim. It remains unsatisfied. (Item 7; Item 9.)

Applicant filed for Chapter 13 bankruptcy in September 2007. He indicated that when he met with the trustee for his bankruptcy, he was advised that his debt-to-income ratio was "not significant enough to file, as [he] would eventually encounter further financial problems." He estimated the total amount of debt listed in the Chapter 13 to be \$10,000 to \$12,000. He and his wife were advised to request dismissal, and followed this advice. The bankruptcy was dismissed in November 2007. (Item 7; Answer.)

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 or other evidence tending to establish good judgment, trustworthiness, 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 revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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, administrative judges apply the guidelines 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(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 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, 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 clearance 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. Such decisions entail a certain degree of legally permissible extrapolation as to 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 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

The security concern for Financial Considerations is set out in AG ¶ 18:

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 had financial problems for at least the past six years, when he became delinquent on several accounts and filed for Chapter 13 bankruptcy. Since 2007, he has had an ongoing inability to satisfy his debts. He failed to present any evidence that he is addressing the debts in the SOR. The evidence is sufficient to raise the above disqualifying conditions.

Five 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 ongoing financial problems are likely to recur, given his failure to address his outstanding accounts. His behavior is frequent and on-going. AG ¶ 20(a) is not applicable.

Applicant indicated that his financial problems were the result of a number of events, including his daughter's illness; his divorce; his ex-wife's poor financial management of their household; and a decrease in his hours at work. Some of these factors, like his daughter's illness and the decrease of hours at work, were beyond his control. However, some factors, like his failure to monitor his wife's spending (both during their marriage and after their divorce) and the divorce itself, are directly attributable to Applicant's actions. Further, he failed to show he acted responsibly in relation to his debt. He failed to present any evidence that he is paying any of his delinquent accounts. AG ¶ 20(b) is not applicable.

There is no evidence that Applicant attended financial counseling. Further, there is little indication that Applicant's delinquent accounts are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant has not made a good-faith effort to pay or resolve his delinquent consumer debts. He presented no evidence of any recent payments or progress toward the settlement of his debts. AG ¶ 20(d) is not applicable.

Applicant failed to present evidence to show that he was in the process of formally disputing any of his debts. AG ¶ 20(e) is inapplicable.

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 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 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.

Applicant failed to address his delinquencies. While he has experienced the illness of his daughter and a decrease in hours at work, he failed to demonstrate any significant efforts to repay his delinquent debt. Accordingly, continuation of these circumstances is highly likely, and the potential for coercion, exploitation, or duress remains undiminished. 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 has not mitigated 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 through 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge