



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



In the matter of:)
)
) ISCR Case No. 11-12244
)
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Kataukas, Esq., Department Counsel
For Applicant: *Pro se*

09/23/2013

Decision

MASON, Paul J., Administrative Judge:

The Government has presented documentary evidence indicating that Applicant has a history of financial problems. His evidence in mitigation is insufficient to support his application for security clearance access. Eligibility for access to classified information is denied.

Statement of the Case

On January 28, 2013, the Department of Defense (DOD) issued the Statement of Reasons (SOR) (Item 1) detailing security concerns under financial considerations (Guideline F). 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).

Applicant furnished his notarized answer to the SOR on March 12, 2013. (Item 3) A copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, was sent to Applicant on June 20, 2013. In an attachment to the FORM, Applicant was advised he could object to the information in the FORM or submit additional information in explanation, mitigation, or extenuation. He received the FORM on July 1, 2013. His response was due by July 31, 2013. No response was received by the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on August 27, 2013.

Findings of Fact

The SOR contains eight allegations under the financial considerations guideline. There are three delinquent credit card accounts, four delinquent student loan accounts, and one unknown account (SOR 1.h). Applicant admitted all allegations. He indicated he "had worked with the creditor(s) but was unable to come to an agreeable compromise." The total amount of delinquent debt owed to the listed creditors is \$13,638. (SOR answer)

Applicant is 57 years old. He has been married since July 1978. He has one son, 33 years old. He also has a stepdaughter, 43 years old. He also has one daughter, 36 years old, from another relationship. He received an associate's degree in February 1976. The degree was not identified. Applicant began working for his current employer in January 1984. He is employed as a computer operations specialist. He has held a security clearance since 1989.

In his August 2011 Office of Personnel Management (OPM) interview summary, Applicant explained that the accounts listed in SOR ¶¶ 1.a, 1.b, and 1.c, became delinquent when the creditors revised the overall terms of the credit cards. He had been making minimum payments until 2009. Then the creditors changed the terms of the accounts. His credit limits were reduced from \$2,000 to \$500. The interest rates for use of the cards increased. He was assessed finance charges and penalties. The monthly payment bills became too high, so Applicant stopped making payments altogether in 2009. The debts were charged off or transferred for collection between December 2008 and September 2009. Applicant provided offers of settlement from the creditors, but no documentation establishing that he settled or satisfied any of the accounts.

SOR ¶¶ 1.d, 1.e, 1.f, and 1.g, list four student loans that were 120 days past due as of January 28, 2013, the date of the SOR. The loans were opened between October 1995 and September 1997. The loans became past due in December 2011. Records from the student loan creditor show that Applicant made 11 additional payments totaling \$1,973, from December 2011 until he stopped payments in October 2012. The total delinquent balance of the four loan accounts is \$1,947. Neither the credit reports nor the student loan records show that the loans are in deferment. Applicant provided an unsubstantiated statement that he tried to settle the accounts.

The eighth account (SOR ¶ 1.h) remains unidentified and unpaid. Applicant indicated in August 2011 that he could not identify the account, but he planned to submit identifying information at a later date. In his November 2012 interrogatory responses (Item 5), he did not supply information identifying the account, but he did furnish an offer of settlement letter from the creditor. In his SOR answer, Applicant provided an unsupported statement claiming he tried unsuccessfully to negotiate a settlement with the creditor.

On November 14, 2012, Applicant submitted a personal financial statement (PFS) with his interrogatory responses. His net monthly income was \$5,661. His total monthly expenses were \$1,000 and his total monthly payments were \$1,780. His net monthly remainder was \$2,881. Applicant has never had financial counseling and he has never tried to consolidate his delinquent accounts through a debt consolidation organization. He furnished no documented evidence concerning his job performance or his activities in the community where he lives.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions that are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on sound and prudent judgment. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.15., the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant bears the ultimate burden of persuasion in demonstrating that he warrants a favorable security clearance decision.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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. 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.

There are two pertinent disqualifying conditions that are potentially applicable: AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*). From December 2008 to December 2011, Applicant accumulated eight delinquent debts totaling \$13,638. AG ¶¶ 19(a) and 19(c) apply.

Four mitigating conditions are potentially applicable: 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 reliability, trustworthiness, and good judgment*); AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control 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*); and AG ¶ 20(d) (*a good-faith effort to repay overdue creditors or otherwise resolve debts*).

In response to the documented evidence of financial problems that he accrued between December 2008 and December 2011, Applicant seems to indicate through his SOR answers that his unsuccessful claims to negotiate settlements is sufficient to show that he warrants security clearance access. While one or two unpaid debts may not disqualify an applicant from security clearance suitability, Applicant has not demonstrated why the Government should not be concerned about his failure to resolve his delinquent accounts, particularly with \$2,881 remaining after he pays his debts and expenses every month. Applicant has never had financial counseling and there are no indications that his delinquent debts are being resolved or under control. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors listed in 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 the participation was 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.

The final security clearance decision must be an overall commonsense judgment based upon careful consideration of the specific guidelines, each of which is to be evaluated in the context of the whole person. (AG ¶ 2(c))

Applicant is 57 years old. He has been married since 1978. His three children are adults. He has been employed by a defense contractor since 1984 and has held a security clearance since 1989. He explained why he stopped paying the credit card debt in 2009, but he provided no reason why he stopped paying the student loan debt in October 2012. I am unable to allocate any probative weight to his unsupported negotiating claims that supposedly prompted the creditors' offers of settlement. Financial counseling may have aided Applicant in finding other ways to resolve his delinquent debts. He could have sought assistance under the bankruptcy law. However, Applicant's failure to remedy his delinquent debt in some fashion constitutes financial irresponsibility and poor judgment. Having weighed and balanced the evidence for and against security clearance eligibility, without an implemented plan to resolve his current delinquent debts, it is likely they will persist in the future. Applicant has failed to overcome the security concerns raised under the financial considerations guideline. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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-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 national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge