



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



In the matter of:)	
)	
)	ISCR Case No. 11-12383
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

08/12/2013

Decision

DAM, Shari, Administrative Judge:

Applicant has three unpaid judgments from 1990, one from 2008, and an unpaid mortgage deficiency owed to a lender subsequent to a foreclosure in 2011. He failed to demonstrate that he made any timely good-faith efforts to resolve these debts, or demonstrate reliability or good judgment in addressing his financial obligations. Security concerns were not mitigated. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Statement of Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 29, 2011. On February 11, 2013, 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 subsequently submitted an undated Answer to the SOR, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) Department Counsel submitted the Government's written case on May 1, 2013. A complete copy of the File of Relevant Material (FORM), containing eleven Items, was provided to Applicant on May 21, 2013. He received the FORM on May 31, 2013. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM, but he did not do so. I received the case assignment on July 25, 2013.

Findings of Fact

In his Answer to the SOR, Applicant denied the delinquent debts listed in the five allegations. (Item 2.)

Applicant is a 60-year-old pipefitter for a defense contractor. He has worked for this defense contractor since 1998. He was married for 23 years, before his wife died. He has one child and two stepchildren, all of whom are adults. (Item 2.)

In July 2011 a security investigator interviewed Applicant about his delinquent debts. Applicant attributed his financial problems to previous mortgage problems. In about 2010, he refinanced the mortgage on his home and borrowed additional monies for repairs. Subsequently, he was unable to make the \$1,425 monthly payment and the loan became delinquent. He attempted to enter into a loan modification, but experienced additional difficulties with the lender. In February 2011 the lender notified him that it was placing the property into the foreclosure process. The mortgage was \$215,000 and the house sold for \$170,000 in May 2011, leaving a \$45,000 deficiency. The most recent credit bureau report (CBR) from May 2013 listed a delinquency of \$13,157 and a balance of \$215,000. (Item 11.) Applicant denied that he owed any monies to the bank for this property. In his Answer, he also denied owing any of the four SOR-listed judgments. He claimed he paid one of them, and had no knowledge of the other three creditors. (Item 2.) He did not submit any documentation to prove that these debts were not his responsibility, or that he paid or resolved one of them.

During his interview with a security investigator, Applicant explained that his financial situation has improved since the May 2011 foreclosure. He now lives with his mother and is current with all bills. He stated that his deceased wife contributed to the mortgage problems because she did not carefully manage their money or pay bills. (Item 5.) His Personal Financial Statement listed a net total monthly income of \$2,020 and expenses of \$1,396, leaving a remainder of \$624 (Item 5.)

Based on CBRs dated July 2011, November 2012, and May 2013, the SOR alleged four unpaid judgments and an unpaid mortgage balance totaling \$18,160, with a

potential \$45,000 owed on the final foreclosure. Three of those judgments are from 1990 and one is from 2008. (Items 6 through 11.)

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.

Applicant has been unable or unwilling to satisfy or resolve three unpaid judgments from the early 1990's, and one judgment from 2008. He failed to present evidence that he is not responsible for any mortgage deficiency as of May 2011, when his house sold through a foreclosure process. The evidence raises both of the above 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 has five unpaid or unresolved delinquent debts, three of which date back to 1990, one from 2008, and a foreclosure matter that occurred in 2011. Because they remain unresolved, despite assertions that they are not his responsibility, he did not demonstrate that similar problems are unlikely to continue or recur. The evidence does not support the application of AG ¶ 20(a).

Applicant provided some evidence that his financial problems arose because his deceased wife failed to properly manage their budget and that he experienced some problems with his lender during a loan modification process. Those were circumstances beyond his control. However, he did not provide sufficient documentation that he paid or attempted to responsibly resolve the four judgments over the years. That evidence is necessary for the full application of AG ¶ 20(b).

Applicant did not provide evidence that he participated in credit or other financial counseling. He did not provide documentation to prove he is addressing the SOR-listed debts. There is insufficient evidence to establish clear indications that his delinquent debts are being resolved or under control. AG ¶ 20(c) is inapplicable.

Applicant did not submit proof that he made a good-faith effort to resolve any of the five SOR-listed debts, despite assertions throughout the investigative process that the debts are not his responsibility. AG ¶ 20(d) does not apply.

There is no evidence that he successfully disputed, paid, or resolved the five debts. Applicant claimed some of the debts did not belong to him. He did not provide a reasonable basis to dispute the legitimacy of the debts or document proof to substantiate the basis of the dispute. He did not provide evidence of any actions he took to resolve the issue. 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 60-year-old man, who has worked for the same defense contractor since 1998. In July 2011 he discussed four unpaid judgments and a mortgage deficiency with an investigator and learned that they were security concerns. After receiving the SOR in July 2012, he was again placed on notice that the Government considered those five debts to be security concerns. To date, he has not taken actions to address or resolve the debts, raising questions about his reliability and judgment.

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 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
Subparagraphs 1.a through 1.e:	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