



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-12885

Appearances

For Government: Tovah A. Minseter, Esq., Department Counsel

For Applicant: *Pro se*

06/27/2013

Decision

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

On February 22, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) noting security concerns arising 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 (DOD) 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 March 26, 2013, answer, Applicant addressed the 12 allegations raised under Guideline F and declined to request a hearing. On April 16, 2013, Department Counsel submitted a File of Relevant Material (FORM), which included 13 attached items. Applicant did not submit a response within the time period of 30 days after his receipt of the FORM. The case was assigned to me by the Defense Office of Hearings and Appeals (DOHA) on June 25, 2013. Based on a review of the case file, I find Applicant failed to meet his burden regarding the security concerns raised under Guideline F. Security clearance denied.

Findings of Fact

Applicant is a 48-year-old electronic security technician who has worked for the same defense contractor since October 2009. He submitted a security clearance application (SCA) on November 25, 2009. Applicant was separated as of November 2009 and divorced by March 26, 2013; the date of his divorce is not given. He has two grown children. Applicant served in the United States Navy from June 1982 until March 1985, when he was administratively discharged.

In his SCA, Applicant noted adverse information regarding his finances. This led to specific questions regarding his finances by an investigator in April 2010. Amongst the topics discussed was a 2003 Chapter 7 bankruptcy which led to the discharge of about \$24,000 in delinquent debt, a potential foreclosure which was averted by the sale of the property in question to a real estate company for approximately \$112,636, and several other delinquent accounts. The accounts of concern comprise the allegations set forth in the SOR. Applicant provided scant information about his life and lifestyle that might explain why he faced or was recently facing financial difficulties. However, a personal financial statement showed that he has a monthly net remainder of approximately \$1,137.¹

In response to the SOR, Applicant admits allegations 1.a, 1.b, 1.c, 1.d, 1.e, 1.g, and 1.j. These allegations amount to about \$17,590. They include three state tax liens (1.a, 1.b, and 1.g) and a delinquent account related to a voluntarily repossessed automobile (1.d). Applicant noted that the state liens at 1.a and 1.b were related to his divorce and to the way his ex-wife had handled their taxes.² He attributed the debts at 1.c and 1.g to an unspecified period of unemployment and a home foreclosure. Applicant wrote that the accounts at 1.e and 1.j had been satisfied, and that those noted at 1.a, 1.b, 1.c, 1.d, and 1.g were subject to repayment agreements. No corroborating evidence was offered with regard to Applicant's depictions of the accounts noted. No evidence of either satisfaction or repayment agreements was offered.

Applicant denied responsibility for the delinquent debts noted in the SOR at 1.f, 1.h, 1.i, 1.k, and 1.l. The debts set forth in these allegations amount to about \$11,250. He wrote that those accounts were unfamiliar to him and did not appear on his most recent credit report of March 26, 2013, which was generated by Experian and included with his response to the SOR.³ There is no evidence showing Applicant ever disputed

¹ FORM, Item 7, at 3.

² In his response to the SOR, Applicant wrote that his ex-wife was to have resolved the tax situation.

³ The FORM offered three credit reports, two from Equifax and a Three-In-One credit report from 2012, 2011, and 2009, respectively. Applicant offered a 2013 Experian credit report. It offers little to fortify Applicant's argument. Being newer, it has been updated since the credit reports included in the FORM. Consequently, some entries may have been deleted for a variety of reasons, including age. None of the entries in Applicant's offered report indicate that any of the accounts at issue have been successfully disputed or satisfied.

the inclusion of these accounts on his credit report or that he otherwise disputed these entries. The Government's evidence shows that the alleged debt at 1.l is owed to an insurance company and that the debtor has the same name and social security number as Applicant.⁴ Moreover, during an earlier interview, Applicant attributed three of the alleged debts to a dating service (1.f), a telecommunications provider (1.h), and utilities bills he co-signed for his sister (1.k).⁵ The above information was set forth in the FORM. Applicant did not respond to the contents of the FORM.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. The AG lists potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's over-arching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. It is an applicant's responsibility to present "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ."⁶ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.⁷

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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

⁴ FORM, Item 13.

⁵ FORM, Item 6, at 13.

⁶ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

the 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.”⁸ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹⁰ A security clearance denial does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Guideline F

Financial Considerations

Under Guideline F, failure or an 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.¹¹ The burden in these proceedings is placed squarely on an applicant. Here, Applicant admitted to seven of the allegations, representing about \$17,590 in delinquent debt. He denied the five other accounts, but provided no corroborating evidence tending to show he is not responsible for them. They amount to about \$11,250. Financial Considerations Disqualifying Conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*) apply. With such conditions raised, it is left to Applicant to mitigate security concerns.

There is no corroborating documentary evidence showing that the multiple accounts at issue have been formally disputed, satisfied, been made subject to a repayment plan, or otherwise addressed. Indeed, there is no documentary evidence showing any action on the part of Applicant with regard to these accounts. Moreover, Applicant has not provided any factual scenarios that make these debts appear to be the result of unique situations. There is, however, an indication of previous financial difficulty in 2003, when he pursued Chapter 7 bankruptcy. Taken in tandem with his current debts, it cannot be concluded that future financial issues will not recur. Therefore, given the evidence of record, the cited debts at issue remain current and

⁸ See also EO 12968, § 3.1(b) and EO 10865 § 7.

⁹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁰ *Id.*

¹¹ AG ¶ 18.

unresolved, obviating application of Financial Considerations Mitigating Condition (FC MC) 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*).

Applicant provided very little detail as to how the debts at issue were created, and what was offered was vague. Equally unexplained are the steps Applicant took, if any, to responsibly react to the situations creating the debts at issue. Therefore, FC MC AG ¶ 20(b) (*the conditions that resulted in the behavior 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*) does not apply.

Applicant provided no corroborating evidence showing he has satisfied any of the debts at issue, formally disputed any of those debts, or currently has any of them under a repayment plan. As noted previously, there is very little information as to how Applicant acted in the face of the debts cited. In addition, there is no evidence Applicant has received financial counseling or that the situation is now under control. Therefore, neither FC MC AG ¶ 20(c) (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) nor FC MC AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) 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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the available facts and circumstances surrounding this case, as well as the whole-person factors. In choosing a decision without a hearing, however, there are scant facts of record. It is noted that Applicant is a mature, 48-year-old, man who was married and has two adult children. He served in the U.S. military for two years before being administratively discharged. For unexplored reasons, he filed for Chapter 7 bankruptcy in 2003. Sufficient information regarding his financial situation in 2009 was revealed on his SCA to generate the issuance of a SOR in 2012. In the SOR, 12 delinquent debts were alleged. Applicant admitted several of the allegations, but wrote, without corroborating evidence, that those accounts had been settled, put into repayment, or otherwise addressed. He denied the remaining five of the 12 alleged debts, although older information showed that he previously acknowledged three of those debts and the Government possessed evidence directly linking a fourth debt to Applicant and his

social security number. Applicant's only proffer was a 2013 Experian credit report which, by itself, only up-dates what one credit reporting bureau is presently reporting. It does little to help Applicant carry his burden in this proceeding.

In light of the scant information provided, Applicant failed to meet his burden in this matter and security concerns remain unmitigated. Therefore, it is not clearly consistent with the national interest to grant Applicant's request for a security clearance. As noted above, a security clearance denial does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines established for issuing a clearance. Clearance is denied.

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.l:	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 access to classified information. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge