



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-12916

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

06/17/2013

Decision

HOWE, Philip S., Administrative Judge:

On May 10, 2011, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On January 30, 2013, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on February 26, 2013. Applicant denied four allegations and admitted the five remaining allegations. Applicant requested his case be decided on the written record in lieu of a hearing.

On March 25, 2013, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the

Applicant on March 26, 2013. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on April 9, 2013. Applicant filed a Response to the FORM within the 30 day time allowed that would have expired on May 9, 2013. His Response is dated May 4, 2013. The Department Counsel had no objection to the inclusion of the Response in the case file. I received the case assignment on May 28, 2013. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant denied the allegations in Subparagraphs 1.c to 1.e, and 1.h. He admitted the other five allegations. (Items 1, 3)

Applicant is 46 years old. He has been married twice and has one stepchild. He works for a defense contractor as an electronics technician. (Item 4)

Applicant's Answer and Response state the delinquent debts in the SOR are old and therefore infrequent. One debt is dated in 2001. Applicant filed Chapter 7 bankruptcy in 1996 (Subparagraph 1.i). He received his discharge in May 1996. Applicant admits this bankruptcy. All the alleged debts occurred after his discharge. Applicant claims he lives within his financial income at the current time. Delinquent debt was caused by his present wife and him earning overtime pay, spending that money, and then overtime at his company decreased substantially. They could not pay the debts they had incurred without their overtime increased income. (Item 3, Response)

Applicant's Response states in May 2011 his total debt was \$89,482 with \$4,012 of delinquent debt. In November 2012 Applicant claims his total debt was \$90,212 with only \$942 of delinquent debt. He asserts this debt was resolved but he does not explain how it was "rectified." Next, Applicant states his only remaining items that need to be "brought current" are the three medical debts for \$1015 listed in Subparagraphs 1.a, 1.b, and 1.f. The SOR lists eight delinquent debts totaling \$37,208. (Items 5-12; Response)

Applicant owes \$611 for a medical debt (Subparagraph 1.a). Applicant admits this debt. He states the debt was overlooked and not paid. He claims he will pay it "in the near future." Applicant did not provide proof of any payment of this debt. It is unresolved. (Items 5-12)

Applicant owes \$70 for another medical debt (Subparagraph 1.b). This debt results from a medical procedure Applicant had, but which he did not pay for the medical charge. He claims the debt was overlooked but he admits he owes it. Applicant asserts this debt will be paid "in the near future." This debt is unresolved. (Items 5-12)

Applicant owes \$1,357 on a credit card debt that was charged off by the creditor and sold to a collector according to the two latest credit reports in the File

(Subparagraph 1.c). Applicant denies this debt. Applicant's Answer states only \$800 was charged off and the debt originated 12 years ago. His Response shows the debt in a charged off status and that the credit limit on the card was \$800. The remaining \$557 is interest and penalties. Applicant claims to have an open credit card account with this company. He also asserts this debt is the same as that listed in Subparagraph 1.h. However, the name of the collector is not the same as that listed in Subparagraph 1.h. This debt is unresolved. (Items 5-12; Answer, Response)

Applicant owed \$15,313 to a bank for a loan (Subparagraph 1.d). Applicant denied this debt. Applicant claims in his Answer the actual debt is \$3,300 and the debt was settled for less than the full amount. The credit report document Applicant submitted with his Answer shows the credit limit was \$3,300 and that the debt was paid for less than the full balance and is paid in full. No date of payment is shown on that document. He does not state the settlement amount to which he refers. He asserts he requested an update of his credit record to show the debt is resolved. The document from the "freecreditreport.com" website shows the debt is resolved. (Items 3, 5-12; Answer, Response)

Applicant owed an automobile lender \$16,930 for a car purchase (Subparagraph 1.e). As of the date of the SOR on January 30, 2013, the debt was alleged to be unpaid. The credit report in the File dated May 20, 2011, shows the balance owed as \$4,925. The November 2012 credit report does not list this debt. Applicant denies this debt. Applicant claims two credit reports show the debt was paid, but Applicant did not submit proof of such payment. He claims the car dealership paid the debt when he traded this vehicle into it for another car. Applicant also submitted a document with his Answer showing the debt is "paid and closed." The account on that document was closed in May 2011. This debt is resolved. (Items 3, 5-12; Answer, Response)

Applicant owes a medical services provider \$334 (Subparagraph 1.f). He admits this debt. He claims this is another debt that he overlooked after he went into a hospital for treatment a few years ago. This debt is unresolved. (Items 5-12; Answer, Response)

Applicant owes a bank \$548 on a charged-off account (Subparagraph 1.g). He admits this debt. He claims his wife incurred this debt six years ago and it will be taken off his credit record because it is only there as a consequence of his home state being a community property state. He submitted a document dated November 27, 2012, showing this amount is owed to a collector and a suggested repayment plan. He circled the installment payment plan starting at \$20 as a down payment and \$44.04 to be paid in each of the succeeding 12 months. But Applicant did not submit proof of any payments on this plan. This debt is unresolved. (Items 5-12; Answer, Response)

Applicant owes a collector \$2,045 on a credit-card debt (Subparagraph 1.h). He denies this debt. Applicant states he tried to contact the collector but could not obtain a current telephone number. He also claims this debt is in error and he wrote to two credit-reporting agencies to request removal of this debt from his credit reports. He did

not submit copies of any letters to prove his assertion. This debt is unresolved. (Items 5-12; Answer, Response)

In December 2012 Applicant wrote letters to eight creditors listed in the SOR. His May 2013 Response does not include or make reference to any replies from those creditors. The letters do not contain the amount of the delinquent debt, only to account numbers on five letters. Only two of the remaining five letters have account numbers which are listed in the May 2011 credit report. (Items 6, 8)

Applicant's November 2012 credit report shows about \$54,000 in student loans that are deferred. At some time in the future Applicant will have to repay these loans. They are an additional financial obligation not listed in the SOR that will affect Applicant's ability to repay his delinquent debts. (Item 7)

Applicant had an investigative interview in May 2011. These delinquent debts were discussed with him. He took little action to resolve six of them after that date. His December 19, 2012 personal financial statement shows a net monthly remainder income of \$1,485. Applicant does not show payments on the statement to more than two creditors. He does not discuss in his Answer or Response any comprehensive plan to repay his delinquent debts or establish a savings plan from which he could repay these obligations. (Items 8, 9, Answer; Response)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, the administrative judge applies the guidelines 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 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. 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 relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, three conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and /or other financial analysis.

From 2001 to the present, Applicant accumulated eight delinquent debts identified on the SOR, totaling \$37,208. Six debts remain unpaid or unresolved that equal \$4,965. However, Applicant's Response in May 2013 admits to \$90,212 of debt, though he does not state whether it is delinquent or being paid timely. Applicant also admits he filed and was discharged in bankruptcy in 1996. The debts listed in the SOR accumulated after his Chapter 7 bankruptcy.

It is clear Applicant cannot pay his delinquent debts in a timely manner. He has a history from 1996 of being unable to pay his debts. And, he consistently spends money beyond his ability to repay it, shown by his admission in his Response that his current debt load in November 2012 is \$90,212, an increase of over \$800 from the May 2011 amount he stated in his Response. These three disqualifying conditions apply.

Furthermore, Applicant has not shown a plan to repay the six debts within a reasonable time. He did not discuss any savings program, from which he could withdraw money to pay these debts or keep his future financial obligations from becoming delinquent in the same manner his current accounts are. Applicant has already filed Chapter 7 bankruptcy once, demonstrating that his spending got out of his control in a significant manner. He has not discussed in his Answer or Response how he would avoid such a predicament in the future.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. No mitigating condition applies.

(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;

(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; and

(f) the affluence resulted from a legal source of income.

The SOR listed six delinquent debts, which continue to be unpaid, so they are currently outstanding. Applicant's contrary argument is not persuasive. His continued practice of spending money he cannot repay in a reasonable period of time shows poor judgment. AG ¶ 20 (a) does not apply.

AG ¶ 20 (b) would apply if the loss of employment were shown by Applicant to have a substantial effect on his ability to repay his debts. In the past 11 years, Applicant has been employed continuously. He also failed to show he acted responsibly since his Chapter 7 bankruptcy in 1996 regarding his financial conditions. He settled the two largest debts but does not explain how he did it with his available funds. Applicant incurred all the debts in the SOR after his bankruptcy. He failed to meet his burden of proof on that issue, so the mitigating condition does not apply.

Applicant did not present any evidence of financial counseling. Nor did he show his accumulation of debt has ceased to be a problem. AG ¶ 20 (c) is not applicable.

Applicant has not initiated a good-faith effort, shown by clearly stated documentation that he repaid six of his creditors. In fact, the information he presented is not directed to meet his burden of proof. He does not address each allegation in a specific manner to show the debts were paid or are being paid by relevant documentations. AG ¶ 20 (d) does not apply.

Applicant did not submit any documents disputing these eight debts, or containing a basis for such disputes. AG ¶ 20 (e) does not apply.

There is no evidence or information concerning any relevant affluence acquired by Applicant. AG ¶ 20 (f) does 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):

(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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken sufficient and consistent action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to resolve his delinquent debts during the past seven years.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the "whole-person" concept against Applicant.

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
Subparagraph 1.a to 1.c:	Against Applicant
Subparagraphs 1.d and 1.e:	For Applicant
Subparagraphs 1.f to 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

PHILIP S. HOWE
Administrative Judge