



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



In the matter of:)	
)	
)	ISCR Case No. 11-13804
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

08/29/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, the Government's File of Relevant Material (FORM), and the exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. His request for a security clearance is denied.

Statement of the Case

On February 27, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that detailed security concerns under Guideline F (financial considerations). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992) as amended; and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

In his April 3, 2013 Answer to the SOR, Applicant admitted the allegations under the financial considerations guideline, except allegations 1.c, 1.f, and 1.n. Applicant also requested a decision based on the written record in lieu of a hearing. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a written presentation of the Government's case in a FORM dated May 21, 2013. On June 10, 2013, Applicant received the Government's FORM, and was given 30 days to file objections and submit material to refute or mitigate the security concerns. No response

was received. The case was assigned to me on August 27, 2013, for an administrative decision based on the record.

Procedural Matters

In its FORM, the Government amended the SOR to add one allegation under paragraph 1, as follows:

u. You are indebted to the Internal Revenue Service for delinquent federal taxes in the approximate amount of \$1,500. As of the date of the Statement of Reasons, it remains unpaid.

Within the 30 days provided, Applicant did not object to the amendment, or respond to the FORM. He did not provide an admission or denial to the Government's proposed allegation. I construe Applicant to have denied the allegation.

Findings of Fact

Applicant's admissions are incorporated as findings of fact. After a thorough review of the pleadings and the evidence, I make the following findings of fact.

Applicant is 31-year-old high school graduate. He served as an enlisted member of the Navy from 2001 until his honorable discharge in 2005. He was unemployed for several months in 2005, and again for about seven months in 2006. He has worked full-time as a security officer since 2008, although he moved to another company in January 2013, where he holds the same position. (Items 4, 7)

Applicant has lived with his fiancée and her three children since 2007. His fiancée is the leaseholder on the apartment, but Applicant pays the \$880 monthly rent. As of 2011, he was the only provider for the family, which has caused financial problems. Applicant also has a biological son who is 11 years old. He lives with his mother, and as of 2011, Applicant was providing monthly child support of \$150 to \$200 through automatic deduction from his salary.¹ (Item 7)

At his 2011 security interview, Applicant stated he could not afford anything other than his rent and food, but he planned to pay his delinquencies. He stated that his financial problems stemmed from circumstances beyond his control: In May 2007, his mother was murdered, and his stepfather and cousin were also shot. Applicant stated in his Answer that these events affected his finances, but did not specify how. He also handled his mother's finances, which affected his ability to meet his own bills. In addition, Applicant was hospitalized in 2006 for pneumonia and "mercer." As of his 2011 interview, he planned to obtain a second job to help resolve his debts. (Item 7)

¹ Applicant changed jobs in January 2013, and the pay statement for his current job does not indicate that child support is being deducted from his salary. (Item 7)

In his 2011 security interview, Applicant stated he had not received financial counseling. However, in his interrogatory response of January 2013, he noted that he is "working with a debt consolidation company." He attached documents from the company showing a list of nine debts to be paid, some of which appear in the SOR. However, there is no documentation showing that Applicant has made payments on any of the listed debts. He also stated in his interrogatory response that he paid a bill of \$114.24 on January 24, 2013. He provided a contact name and confirmation number, but no supporting documentation. The creditor is not listed in the SOR. (Item 7)

Evidence supporting the debts alleged in the SOR appear in Applicant's credit reports of 2011 through 2013, his security clearance application, and his subject interview. Six of Applicant's delinquencies relate to medical debts (allegations 1.b – 1.f and 1.p). They total \$1,328. Another four debts, totaling \$1,832, relate to cell phones and/or cable. None of these debts are paid. (Item 1)

The evidence shows that Applicant is indebted to several government entities. He owes a total of \$370 for three debts owed to a city where he lived several years ago. The debts became delinquent in 2006 and 2007 (allegations 1.j – 1.l) Applicant stated in his security interview that he disputed the debts, and could not remember any information about the accounts. (Items 4-8)

Applicant also owed unpaid taxes to the state government where he currently resides. He provided documentation showing that his tax refunds for tax years 2009 through 2011 were seized to pay these back taxes. No current tax debt to this state appears in his credit reports. (Item 4) Applicant indicated in his 2011 security clearance application he owed \$1,500 to the Internal Revenue Service (IRS) (allegation 1.u). He also disclosed this debt, stemming from unpaid income taxes for 2009 and 2010, during his security interview. At that time, he planned to pay the debt in 2011. His credit reports do not show an outstanding debt owed to the IRS. (Items 4-8)

In his Answer to the SOR, Applicant denied allegations 1.c, 1.f, and 1.n, stating that he paid these debts. He provided no evidence that he has paid the debts at allegations 1.c or 1.f -- two medical accounts, each past due in the amount of \$175. The largest SOR debt appears at allegation 1.n. It relates to a balance of \$3,054 on an automobile loan. His 2011 credit report shows the account was opened in 2004, and the last activity occurred in May 2005. Applicant stated in his security clearance application that the debt was paid in full, and during his security interview he said that he paid the balance in full in 2009. He provided documentation showing that the collection agency that handled the account retained no interest in the collateral, as of April 2010. His 2012 and 2013 credit reports show a zero balance. (Items 2, 4, 5, 7)

Applicant submitted a January 2013 pay statement showing net pay of \$575. His January 2013 personal financial statement (PFS) shows that he earns \$1,225 net monthly income, which includes his fiancée's net income of \$250 per month. His

monthly expenses total \$2,179. He did not list payments on any debts. It appears from the PFS that Applicant has a negative cash flow of \$954 per month. (Item 7)

Policies

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and policy in the AG.² Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations).

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest³ for an applicant to either receive or continue to have access to classified information. The Government must produce admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁴ A person who has access to classified information enters a fiduciary relationship with the Government based on trust. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as her or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁵

Analysis

Guideline F (Financial Considerations)

AG ¶ 18 expresses the security concern pertaining to financial considerations:

² Directive. 6.3.

² See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³ See *Egan*, 484 U.S. at 528, 531.

⁴ See *Egan*; AG ¶ 2(b).

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 over-extended is at risk of having to engage in illegal acts to generate funds. . .

Applicant accumulated numerous delinquent debts and has been unable to pay them. The debts in the SOR total \$10,517. His history of financial delinquencies supports application of disqualifying conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

Under AG ¶ 20, I considered the following conditions that can potentially mitigate security concerns:

(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.

Although Applicant's debts started becoming delinquent in about 2005, they are not in the distant past because most of the debts remain unpaid. His unresolved financial situation casts doubt on his reliability, and AG ¶ 20(a) cannot be applied.

AG ¶ 20(b) relates to financial problems that stem from conditions that an applicant could not foresee or control, and which have a negative effect on his finances. Some of Applicant's debts resulted from circumstances beyond his control,

including his hospitalization in 2006, and the subsequent loss of his job. He was also unemployed in 2005 after his discharge from the Navy. Applicant also suffered the tragic and unexpected loss of several family members in 2007. He stated that this affected his finances, though the connection is unclear. In 2011, Applicant was the sole support of his family of five, and was providing child support for another son. However, Applicant's hospitalization and unemployment were seven to eight years ago. In addition, Applicant's fiancée now contributes to the family income. For full mitigation, an applicant must show that he has acted reasonably in response to the unexpected circumstances. Here, Applicant stated he retained a debt-consolidation service, but provided no evidence of payments made on any debts. Applicant receives only partial mitigation under AG ¶ 20(b).

Applicant stated in his Answer that he paid three of the SOR debts. However, he submitted no documentation to support his claim as to allegations 1.c or 1.f. The Appeal Board has held that “it is reasonable for a Judge to expect Applicants to present documentation about the satisfaction of specific debts.”⁶ The record does include evidence that Applicant has paid the car loan at allegation 1.n. He provided evidence that the collection agency that held the debt has no remaining interest in the collateral. In addition, Applicant's two most recent credit reports list the creditor, and show a balance of zero. I find for the Applicant as to allegation 1.n. Although Applicant has taken steps toward dealing with his debts, in particular by conferring with a debt-resolution company, there is no evidence he has begun payments. His finances are not under control, and AG ¶¶ 20(c) and (d) do not apply.

During his security interview, Applicant stated he disputed some of the accounts on his credit reports. However, there is no evidence showing the basis of his dispute, that he notified the credit agencies, or took other steps to resolve the dispute. AG ¶ 20(e) cannot be applied.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the totality of an applicant's conduct and all the circumstances. An 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.

⁶ ISCR Case No. 09-07091 at 2 (App. Bd. Aug 11, 2010, quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)).

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant accrued more than \$10,000 in delinquent debt. He was on notice that delinquent debts are a security concern since 2011, when he completed his security clearance application. Although applicants are not required to be debt free, they are expected to develop a plan to resolve their debts, and provide evidence that they are implementing that plan.⁷ In January 2013, Applicant contacted a debt-consolidation company, but there is no evidence he has begun payments or otherwise implemented a plan to deal with his debts. In light of his negative cash flow, it is unlikely Applicant will be able to substantially change his financial situation in the near future.

A fair and commonsense assessment of the available information shows Applicant has not satisfied the doubts raised about his suitability for a security clearance. For these reasons, I conclude he has not mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F	AGAINST APPLICANT
Subparagraphs 1.a – 1.m	Against Applicant
Subparagraph 1.n	For Applicant
Subparagraphs 1.o – 1.t	Against Applicant
Subparagraph 1.u	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge

⁷ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).