



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



In the matter of:)	
)	
)	ISCR Case No. 11-13824
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R.Mendez, Esq., Department Counsel
For Applicant: *Pro se*

06/19/2013

Decision

LYNCH, Noreen, A., Administrative Judge:

On February 22, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹ The 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 (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on April 25, 2013. A notice of hearing was issued on May 2, 2013, scheduling the hearing for June 4, 2013. Government Exhibits (GX) 1-4 were admitted into evidence, without objection. Applicant testified and submitted Applicant Exhibits (AX) A-B, which were admitted without objection. I kept the record open until June 11, 2013, and Applicant timely submitted a

¹At the hearing, the Government withdrew the allegation under Guideline E (Personal Conduct).

document, which was marked as AX C. The document was admitted without objection. The transcript (Tr.) was received on June 12, 2013. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the February 22, 2013, SOR, Applicant admitted the allegations, under Guideline F (Financial Considerations) and denied the allegation under Guideline E (Personal Conduct) with explanations.

Applicant is a 37-year-old systems administrator for a defense contractor. He graduated from high school and attended college from 1993 until 1999. He continues his education at night in computer science. Applicant is married and has two children. (GX 1) He has been with his current employer for about two years. This is his first application for a security clearance.

The SOR alleges 44 debts totaling approximately \$64,051.00, which include medical accounts, collection accounts, a car repossession, and student loans. The credit reports confirm the debts.² (GX 2-3)

Applicant acknowledged that he made poor financial decisions after graduating from college. He helped family members, including his mother and younger sibling. He amassed delinquent debt when his mother-in-law moved into his family home. His mother lives with his family now. He cared for both of them, as well as his wife and children. He had to rent a larger and more expensive apartment to accommodate all the family members. He did not receive any financial help from his mother or his mother-in-law. His wife stopped working after giving birth to their first son. Applicant was the sole provider for the family and he could not maintain his expenses. He also noted that many medical accounts were due to emergency room visits for his children. (Tr. 21) His first son was born premature and he had various health issues.

Applicant believes he has paid approximately \$250 to his medical creditors in the past year. (Tr. 23) He does not have any receipts and is not certain which accounts have been paid. (GX 4) Applicant was credible when he stated that he intends to pay his debts, but at this time he does not have sufficient funds to arrange settlements for the many accounts. Applicant has not contacted creditors for the student loans. He has not obtained financial counseling.

Applicant explained that his goal is to pay small accounts as soon as he is able. He understands that he needs documentation to confirm that certain debts have been paid. Before the hearing, Applicant paid approximately \$500 for an electric bill, but he had no documentation. He also paid some pay-day loans which totaled about \$1,500 to \$2,000. (Tr. 28)

²At the hearing, the Government stipulated that SOR allegations 1.00 and 1.pp are duplicate accounts.

Applicant's current salary is approximately \$80,000. His wife is currently working and earns a salary of approximately \$40,000. He pays the daily expenses and he started a 401(k) retirement savings plan with his current employer. (Tr. 29)

Applicant realizes that he has made a mistake by providing for all his family members and not paying his own bills. He also realizes that he and his wife need to devise a plan to share the debts equally. His wife also needs to contribute more to the household expenses and Applicant realizes the importance of her help. Applicant is earnest and honest about his current financial state. He desires to pay his debts.

Applicant submitted three letters of recommendation from his employer and colleagues. He is admired for his honesty and integrity. He always performs his work in a timely manner. Applicant possesses a tremendous knowledge and skill. He has a strong work ethic. He complies with strict deadlines and is a role model for other employees. He is a trustworthy individual. (AX A-C)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. 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 overarching 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by

Department Counsel. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

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 the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance 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.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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. ...

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

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

⁸ *Id.*

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (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;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admits that he has multiple delinquent debts. He acknowledges that he did not handle his finances well as a young man. The debts are from 2006 until the present. His credit reports confirm the debts are valid. Consequently, the evidence is sufficient to raise disqualifying condition ¶ 19(a), and 19(c).

AG ¶ 20 provides conditions that could 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;

(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.

Applicant was candid when he noted that he was irresponsible in some ways as a young man with his finances. The delinquent medical debts occurred when he took his children to the emergency room. He helped family members and did not attend to his own expenses. He has recently paid some small medical bills but he could not provide documentation. He wants to settle his debts, but he does not have sufficient funds at this time. He has not received financial counseling. He does not have an agreement in place for his student loans. He intends to pay but does not know how long it may take him. I find that the financial considerations concerns are not mitigated.

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):

(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. 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 facts and circumstances surrounding this case as well as the whole-person factors. Applicant is a 37-year-old employee of defense contractor. He is married and has two children. He continues his education at night. He has recently paid or settled some small accounts. He was candid that he is not certain how long it will take to save the money to satisfy more debts. He provided help to his extended family for a long period of time which caused him to become delinquent on his own debts.

Applicant did not meet his burden of proof. He has not provided sufficient evidence to show that he has addressed the financial issues at hand. Applicant has unresolved student loans. He acknowledged his irresponsibility and cannot receive full credit for circumstances beyond his control. He has started to act more responsibly, but he has not shown a sufficient track record of debt repayment to mitigate all security concerns. Any doubt must be resolved in favor of the government. He has not mitigated the security concerns under the financial considerations guideline.

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.nn:	Against Applicant
Subparagraph 1.oo:	For Applicant
Subparagraph 1.pp	For Applicant
Subparagraphs 1.qq-rr:	Against Applicant
Paragraph 2, Guideline E:	WITHDRAWN

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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge

