



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



In the matter of:)	
)	
)	ISCR Case No. 11-14246
)	
Applicant for Security Clearance)	

Appearances

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

08/28/2013

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 5, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 by the DOD on September 1, 2006.

Applicant answered the SOR in writing on May 2, 2013, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on May 20, 2013. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on June 18, 2013. As of August 22, 2013, he had not responded. The case was assigned to me on August 27, 2013. The Government exhibits included in the FORM are admitted.

Findings of Fact

Applicant is a 59-year-old employee of a defense contractor. He served in the U.S. military from 1974 until he was honorably discharged in 1986. He had a security clearance in the military, but it lapsed when he was discharged. He is a high school graduate. He married in 1974 and divorced in 1989. He married again in 2010. He has two adult and two minor children. He also has four minor stepchildren.¹

Applicant worked for the same employer from 1986 until he was laid off in May 2010. He worked for a construction staffing company from May 2010 until he was hired by his current employer in May 2011.²

The SOR alleges 11 delinquent debts and unpaid judgments. All of the debts and judgments appear on at least one credit report. Applicant denied owing the judgment alleged in SOR ¶ 1.c (furniture store - \$1,792) and the debt alleged in SOR ¶ 1.l (cable company - \$470). He stated the two accounts were paid. He stated that he was making payments on the debt alleged in SOR ¶ 1.f (collection company/bank - \$3,975) and the judgments alleged in SOR ¶¶ 1.b (\$699), 1.d (credit union - \$8,783), and 1.k (\$212). He admitted owing the remaining debts, which total about \$11,492.³

Applicant attributed his financial problems to being laid off in May 2010. However, according to the credit reports, many of the debts became delinquent before he was laid off. The debt to a credit union, which formed the basis of the \$8,783 judgment alleged in SOR ¶ 1.d, became delinquent in 2009. The \$3,975 debt to a collection company on behalf of a bank (SOR ¶ 1.f) became delinquent in 2009. The \$212 judgment alleged in SOR ¶ 1.k was filed in March 2010. The \$6,066 debt to a financial institution (SOR ¶ 1.j) became delinquent in 2007.⁴

Applicant listed a number of delinquent debts on his Questionnaire for National security Positions (SF 86) that he submitted in June 2011. He discussed his financial problems with the investigator for his background investigation in September 2011. He responded to DOHA interrogatories in February 2013.⁵ DOHA asked:

Please explain below what you have done to resolve your debts. If you have made payments on the debts cited below, please provide

¹ Items 4, 7.

² Item 4.

³ Items 3-7.

⁴ Items 4-7.

⁵ Items 4, 7.

documentary proof, such as copies of cancelled checks, copies of money orders, recent invoices or statements reflecting a current balance and a recent payment, and or other correspondence received from either the collection agency or the original creditors. Please also list any other delinquent debts and provide documents as to what you are doing to resolve the debts.⁶ (emphasis in original)

In response to the interrogatories, Applicant wrote that two debts were paid off and that he was making biweekly payments on three debts.⁷ He did not submit any documentation of payments.

Department Counsel argued in the brief attached to the FORM:

Applicant states that he has paid off two debts totaling approximately \$2,262, and that he is making payments on four additional debts. However, Applicant has yet to provide documentary proof of payments on any of the debts.

Department Counsel later stated that “he has not provided any documentary proof that he has resolved or attempted to resolve any of his debts,” and “Applicant has provided no proof of payments or efforts to resolve his outstanding debts.”

Despite the notification in the DOHA interrogatories and the FORM, Applicant submitted no documentary evidence establishing payments toward any of his delinquent debts and unpaid judgments. There is no indication that Applicant received financial counseling.

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 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, administrative judges apply 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.

⁶ Item 7.

⁷ Item 7.

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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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.” The applicant has the ultimate burden of persuasion to obtain a favorable security 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 safeguard 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 EO 10865 provides that adverse 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.” 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 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 notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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 was laid off work in May 2010 after 24 years with the same employer. He worked for a construction staffing company from May 2010 until he was hired by his current employer in May 2011. Applicant attributed his financial problems to being laid off. The layoff constitutes a condition that was beyond his control. However, many of his debts became delinquent before he was laid off, and he has been working for his current employer for more than two years.

Applicant states that he paid two debts and that he is making payments on four debts. Despite repeated comments about the need for documentary evidence, he submitted nothing to corroborate his assertions. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See 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)).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that they rose predominantly from conditions that were beyond his control; that he acted responsibly under the circumstances; or that he made a good-faith effort to pay his debts. His

financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions are applicable.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's honorable military service. However, the limited information in the record has not convinced me that his finances are sufficiently in order to warrant a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated financial considerations security concerns.

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.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.

Edward W. Loughran
Administrative Judge