



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 11-14570
)
Applicant for Security Clearance)

Appearances

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

08/20/2013

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On March 18, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under Executive Order (EO) 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) implemented on September 1, 2006.

On May 20, 2013, Applicant answered the SOR and requested a hearing. The case was assigned to me on June 19, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 2, 2013, and the hearing was convened as scheduled on July 10, 2013. At the hearing, Department Counsel offered

Government's Exhibits (GE) 1 through 7. Applicant testified and offered Applicant's Exhibits (AE) A through D. The record was left open until July 24, 2013, for Applicant to submit matters. He timely submitted documents that were marked as AE E through K. All of the proffered exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on July 17, 2013.

Procedural Matters

At the hearing, Applicant affirmatively waived the 15-day notice requirement in Paragraph E3.1.8 of the Directive.¹

Findings of Fact

Applicant is a 28-year-old computer engineering technician who works for a defense contractor. He has been working for his current employer since September 2010. He graduated from high school in 2004 and attended college for about two years. He has never been married and has no children. He has held a security clearance since 2009 without incident.²

The SOR alleged that Applicant had five delinquent debts totaling \$17,847. In his Answer, Applicant admitted each of the allegations. His admissions are incorporated herein as findings of fact.³

From about 2007 to 2009, Applicant lived with a woman. During that period, she was unemployed and he supported her. He took out a credit card in his name and let her use it. He traveled often in his job, and she would use the credit card while he was gone. She was responsible for the credit card charges in the largest alleged debt (SOR ¶ 1.d). In 2010, Applicant was furloughed from his job for 70 days and collected unemployment during that period. Each debt is addressed separately below.⁴

SOR ¶ 1.a – collection account for \$638. This cable television service account was placed for collection in August 2008. Applicant provided a collection company letter dated July 5, 2013, reflecting that this account has been paid.⁵

SOR ¶ 1.b – collection account for \$274. This clothing store account had a date of first delinquency/date of last activity of February 2008. Applicant provided a collection company email dated July 1, 2013, reflecting that this account has been paid.⁶

¹ Tr. at 12-13.

² Tr. at 6-7, 30, 43-44; GE 1, 6.

³ SOR; Applicant's Answer to the SOR.

⁴ Tr. at 31-32, 37-38, 41, 54-55, 57; GE 4, 5.

⁵ Tr. at 34, 53; GE 2, 3, 4; AE C, F.

⁶ Tr. at 34-35; GE 2, 3, 4; AE D, G.

SOR ¶ 1.c – collection account for \$1,850. This account had a date of first delinquency/date of last activity of October 2007. Applicant provided a collection company letter dated July 5, 2013, reflecting that he entered into a settlement agreement for this debt. Under that agreement, he will pay \$250 each month until he pays \$2,250. He made the first \$250 payment on July 3, 2013, and testified that he will continue to make those payments.⁷

SOR ¶ 1.d – collection account for \$13,611. This account had a date of first delinquency/date of last activity of September 2006. Applicant testified that he set up a payment arrangement for this debt. He provided a collection company letter dated July 1, 2013, reflecting that he made a \$200 payment toward this debt.⁸

SOR ¶ 1.e – collection account for \$1,474. This was a medical debt for expenses that were not covered by Applicant’s medical insurance. He provided a bank statement reflecting that he made a \$100 payment on July 16, 2013, toward this debt.⁹

When Applicant was furloughed in 2010, he did not realize that income taxes were not taken out of his unemployment compensation. After he filed his 2010 income tax return, he learned that he owed back taxes. His past-due tax issue was resolved when \$752 of his 2012 tax refund was withheld.¹⁰

In his Electronic Questionnaire for Investigations Processing (e-QIP) dated July 23, 2009, Applicant disclosed that some of the alleged debts were delinquent. In Office of Personnel Management (OPM) interviews on August 8, 2009, and September 15, 2011, Applicant was questioned about those debts. In the latter interview, he stated that his delinquent debts had not been paid because he had not been receiving steady work assignments from his employer. At that time, he indicated that he intended to pay the accounts. When asked at the hearing why he just recently began making payments on the delinquent debts, he stated that he had been traveling outside the country “pretty much nonstop” for the past 12 months. He also testified that he was home about three or four weeks in the past ten months and stated, “It hasn’t been high on my priority list to take care of those debts when I come home before I leave to go back overseas again.” When asked if he had the resources to pay the debts, he stated:

I’ve had some resources set aside for quite some time now. I just haven’t gotten around to getting in contact with these credit agencies to make the initial payments. With this jeopardizing my job I had to go ahead and use the funds that I have started saving over the past few years to start paying these debts.

⁷ Tr. at 32-33, 52-54; GE 2, 3, 4; AE B, H.

⁸ Tr. at 35-38, 54-56; GE 2, 3, 4; AE I.

⁹ Tr. at 38-40, 56; AE K.

¹⁰ Tr. at 41-44, 54; GE 5; AE J.

During his last OPM interview, Applicant also stated that he has not sought financial counseling or debt consolidation services. However, he testified that his mother is providing him financial advice.¹¹

In responding to interrogatories on February 8, 2013, Applicant stated that he had not made payment arrangements or was not making payments on the alleged debts. In that response, he also stated:

I've had no contact with any creditor/debt purchaser due to the fact I've been working overseas and [had] no way of communication with creditors besides the ones included here within.

The creditor communications provided with his response to the interrogatories were attempts to collect the delinquent debts. In that response, he also provided a personal financial statement (PFS) that reflected his total net monthly income was \$3,150, and his total monthly expenses were \$3,554, which left him a negative net monthly remainder of \$403. The PFS listed the alleged debts, but did not provide for any payments toward them.¹²

Applicant presented a letter of reference from the chief executive officer (CEO)/ president of his company. The CEO indicated that Applicant had a great work ethic and believed he was trustworthy.¹³

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 that 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.

¹¹ Tr. at 44-45, 49-52; GE 4, 6.

¹² Tr. at 46-47; GE 4.

¹³ AE A.

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.

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 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 about 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* Executive Order 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 as follows:

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. Two are potentially applicable in this case:

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

Applicant accumulated delinquent debts that he was unable or unwilling to satisfy for an extended period. This evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquent debts are ongoing, significant, and cast doubt on his current reliability, trustworthiness, and good judgment. At least four of those debts were delinquent for four to six years. His furlough for 70 days in 2010 was a condition beyond his control; however, he has not established that he acted responsibly under the circumstances. He initially claimed that he did not take any action earlier to resolve the debts because he had unsteady work assignments and then claimed he did not do so because he had been out of the country for significant periods. His explanations for the delays are not convincing. He was questioned about the debts in OPM interviews in 2009 and 2011 and was sent interrogatories about them in 2013. Even though he had known that these debts raised security concerns for years, he failed to take any action on them until a week or two before the hearing. His procrastination in dealing with these debts does not demonstrate the reliability, trustworthiness, and good judgment expected of an individual who is granted a security clearance.¹⁴

Although Applicant recently has resolved the debts in SOR ¶¶ 1.a and 1.b and recently made payments on the remaining debts, he has failed to show a meaningful

¹⁴ See ISCR Case No. 01-21030 at 3-4 (App. Bd. May 7, 2004) (Given Applicant's history of financial problems, the sizable nature of the indebtedness, and the fact that the debts at issue had been incurred years earlier, but virtually no effort had been made to resolve them until the eve of hearing or just after the hearing--well after the invocation of the security clearance process and the issuance of the SOR --it was not arbitrary or capricious for the Administrative Judge to decide that the evidence was insufficient for him to conclude that Applicant's efforts to otherwise resolve her debts warranted application of [the mitigating condition that was the predecessor to AG ¶ 20(d)])

track record of payments. He made those recent payments because his security clearance was in jeopardy. I am not convinced that he will continue to make payments on the unresolved debts in the future.

From the evidence presented, I am unable to find that Applicant's financial problems are being resolved or are under control. AG ¶¶ 20(a) and 20(c) do not apply. AG ¶¶ 20(b) and 20(d) partially 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a valued employee. Nonetheless, insufficient evidence has been presented to establish that his financial problems are being resolved or are under control. In his PFS submitted in February 2013, he reported a negative monthly cash flow. Most importantly, Applicant failed to show that he has acted in a responsible and prudent manner in handling his financial problems.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F.

Formal Findings

Formal findings 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.b:	For Applicant
Subparagraphs 1.c – 1.e:	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.

James F. Duffy
Administrative Judge