



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



In the matter of:)	
)	
)	ISCR Case: 11-14952
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

01/07/2014

Decision

DAM, Shari, Administrative Judge:

Since late 2006 Applicant accumulated six delinquent debts totaling over \$63,000. At this time he has paid \$11,000 toward one debt. The other five debts remain unpaid or unresolved. He failed to demonstrate that he is reliable in addressing his financial delinquencies. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On August 1, 2011, Applicant submitted a security clearance application (SF-86). On August 7, 2013, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On August 30, 2013, Applicant submitted an Answer to the SOR requesting that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) On October 21, 2013, a complete copy of a File of Relevant Material (FORM), containing seven Items, was mailed to Applicant and afforded him an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on October 28, 2013, and returned the receipt to the Defense Office of Hearings and Appeals (DOHA). He did not provide additional information in response to the FORM within the 30-day period. I received the case assignment on December 19, 2013.

Findings of Fact

In his responses to the SOR, Applicant denied all six allegations pertaining to delinquent debts. (Item 3.)

Applicant is 46 years old. He is married to his second wife with whom he has one child. He has three children from his first marriage. In May 1997 he earned a bachelor's degree in psychology. Since May 2010 he has worked as a protective security officer for defense contractors. From 2001 to the present, he has also been working in the real estate field. Sometime toward the end of 2007, he terminated a real estate business partnership, resulting in debt and other related issues. From 1988 to 2001, he worked as a police officer. (Item 4.)

In September 2011 a security investigator interviewed Applicant about his background and delinquent debts listed on a current credit bureau report (CBR). During that interview, Applicant discussed the accounts, subsequently alleged in the SOR, along with other debts. He indicated that many accounts became delinquent in 2007 after his business partnership failed. He said that some creditors would not accept payments because the debts were charged off. He acknowledged that he did not have enough money to pay the debts. (Item 7.) On June 20, 2013, he completed a set of interrogatories relating to ten delinquent debts, six of which are included in the August 2013 SOR. He noted that the civil statute of limitations for four of the six debts had expired in 2010, and that they would be removed from his credit history in late 2013. (Item 7.)

According to CBRs, dated August 2011 and February 2013, Applicant's delinquent debts began accumulating in late 2006 and into 2007. Based on those CBRs, the SOR alleged six delinquent debts totaling \$63,295. The status of each debt is as follows:

1. The 2007 judgment listed in ¶ 1.a for \$21,796 is being resolved with monthly payments of \$300. As of June 2013 the balance was \$10,812. (Items 3, 7.)

2. The \$84 debt listed in ¶ 1.b is owed to a cellular company, and remains unpaid or unresolved. Applicant asserted that he did not intend to pay the debt because the company illegally changed his service. (Items 3, 7.)

3. The \$13,579 debt listed in ¶ 1.c is owed to a bank for a credit card Applicant used for his failed business. Applicant did not contest the underlying debt. However, he asserted that he did not intend to pay the debt because the creditor documented it as a loss on its ledger, and the collection agency has no evidence of ownership of the debt. He said the civil statute of limitations ran in 2010. He disputed the debt with the credit reporting bureaus. In his Answer he wrote, "This debt will be automatically removed from my credit report in three months and will effectively cease to exist." He failed to provide documentation to support his claim. It remains unpaid or unresolved. (Items 3, 7.)

4. The \$10,986 debt listed in ¶ 1.d is owed to a department store. Applicant used the account for his failed business. Applicant did not contest the underlying debt. However, he asserted that he did not intend to pay the debt because the creditor documented it as a loss on its ledger, and the collection agency has no evidence of ownership of the debt. He said the civil statute of limitations ran in 2010. He disputed the debt with the credit reporting bureaus. In his Answer he wrote, "This debt will be automatically removed from my credit report in three months and will effectively cease to exist." It remains unpaid or unresolved. (Items 3, 7.)

5. The \$12,760 debt listed in ¶ 1.e is owed to a financing company. Applicant used the account for his failed business. Applicant did not contest the underlying debt. However, he asserted that he did not intend to pay the debt because the creditor documented it as a loss on its ledger, and the collection agency has no evidence of ownership of the debt. He said the civil statute of limitations ran in 2010. He disputed the debt with the credit reporting bureaus. In his Answer he wrote, "This debt will be automatically removed from my credit report in three months and will effectively cease to exist." It remains unpaid or unresolved. (Items 3, 7.)

6. The \$4,090 debt listed in ¶ 1.f is owed to a credit card company. Applicant used the account for his failed business. Applicant did not contest the underlying debt. However, he asserted that he did not intend to pay the debt because the creditor documented it as a loss on its ledger, and the collection agency has no evidence of ownership of the debt. He said the civil statute of limitations ran in 2010. He disputed the debt with the credit reporting bureaus. In his Answer he wrote, "This debt will be automatically removed from my credit report in four months and will effectively cease to exist." It remains unpaid or unresolved. (Items 3, 7.)

To date, Applicant has resolved \$10,986 of the \$63,295 of SOR-listed delinquent debts. He has no intention to resolve the remaining \$52,309 and denies responsibility for the debt. He submitted his June 2013 household budget. He and his wife have a net monthly income of \$3,166 and expenses of \$1,065, including \$150 payments for child

support. He also pays \$1,645 toward four debts, which include two student loans, one SOR-listed debt, and a car loan. He has approximately \$456 remaining at the end of the month. (Item 7.)

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references describing his judgment, morality, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 (AG) 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Since late 2006 Applicant has been accumulating delinquent debts that he has been unable or unwilling to satisfy. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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's six delinquent debts began accumulating in late 2006. He is making payments toward the resolution of one debt. His other five debts remain unresolved. He failed to demonstrate that such problems are unlikely to continue, recur, or be resolved, calling into question his reliability and trustworthiness. The evidence does not support the application of AG ¶ 20(a).

Applicant provided some evidence that his delinquent debts arose because he experienced problems related to a partnership termination in late 2006 and into 2007. That may have been a circumstance beyond his control. However, he did not provide evidence that he attempted to responsibly address or manage the delinquent debts as they were accumulating after the partnership termination, a factor that must be considered in establishing mitigation under AG ¶ 20(b). Thus, this mitigating condition has little application.

Applicant did not provide evidence that he participated in credit or financial counseling. He acknowledged that five of the six SOR-listed delinquent debts, totaling \$52,309, remain unresolved. Hence, AG ¶ 20(c) has no application, as there are not clear indications that his financial problems, specifically the SOR-listed debts, are under control. Other than one debt, Applicant did not provide evidence that he made a good-faith effort to resolve the other five debts as required under AG ¶ 20(d).

Although Applicant disputed the delinquent debts through the credit reporting agencies some time ago, there is no evidence that Applicant's disputes were successful and resulted in the removal of the debt from his credit history. AG ¶ 20(e) has no application.

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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a 46-year-old man, who began working for a defense contractor in May 2010. In August 2011 he completed a SF-86. In September 2011 he discussed delinquent accounts with a security investigator. In June 2013 he submitted interrogatories essentially indicating that he was no longer responsible for the debts and that they were legally unenforceable. In his August 2013 Answer he denied financial responsibility for the five debts that remained unaddressed. While Applicant may have a legal basis to challenge the delinquent debts, his refusal to manage or address \$52,000 of delinquent debts over the past several years raises questions about his trustworthiness, reliability, and judgment. Overall, the record evidence leaves me with doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

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:	For Applicant
Subparagraphs 1.b to 1.f:	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.

SHARI DAM
Administrative Judge