



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



In the matter of:)
)
) ISCR Case No. 11-15104
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

05/29/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On May 5, 2014, 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 DOD for SORs issued after September 1, 2006.

In an undated answer to the SOR, Applicant elected to have his case decided on the written record in lieu of a hearing. On March 3, 2015, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was provided to Applicant on March 4, 2015, and it was received on March 19, 2015. Applicant was

afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submitted additional information and did not object to evidence included in the FORM. The evidence provided was admitted into the record. The case was assigned to me on May 20, 2015.

Findings of Fact

Applicant admitted SOR allegations ¶¶ 1.e and 1.f. He denied the remaining allegations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. He received a general equivalency diploma, attended trade school, and earned a certificate. He has been employed by a federal contractor since May 2009. Before then he was unemployed after being laid off in February 2009. He never served in the military. He married in 1993 and has a 20-year-old son and a 24-year-old stepson.¹

After reviewing a credit bureau report (CBR), Applicant disclosed on his July 2010 security clearance application (SCA) numerous debts that were delinquent.² He was unaware of each account until he reviewed the CBR. In a background interview on November 15, 2010, he attributed his financial problems to a lack of steady and insufficient income from 2002 to approximately May 2005. He also admitted that they were due to poor financial management.³

During a December 18, 2013, interview with a government investigator, Applicant disclosed that his use of alcohol had a negative impact on his personal life and finances. He did not keep current with financial obligations because he was using alcohol excessively. He consumed alcohol on a daily basis until he passed out. He drank a 750 milliliter bottle of whiskey daily after consuming a case of beer. He drank to intoxication. He drank by himself and with others. In February 2013, he and his brother were riding motorcycles, and he witnessed his brother killed in an accident. Both he and his brother had been drinking alcohol on the day of the accident. After the accident, Applicant decided to never drink again. He disclosed in the interview that his use of alcohol impacted his relationship with his spouse, as they would argue about his drinking and the financial strain it put on the family. Applicant would forego paying bills to purchase alcohol. He intends to remain sober in the future.⁴

¹ Item 4.

² Item 4.

³ Item 8.

⁴ Item 9. Applicant's alcohol abuse is not alleged. It will not be considered for disqualifying purposes but will be considered when analyzing mitigating conditions and the whole-person.

Applicant disclosed to the government investigator that during the time he was drinking alcohol, he did not care whether debts were paid or not paid. When he became unemployed, he did not have the financial means to keep up with financial obligations. He did not know how to contact each creditor to resolve the debts. He also disclosed he had defaulted loans; had debts turned over to collections; had credit cards suspended; had accounts charged-off or cancelled for failing to pay as agreed; had been evicted for non-payment; had been 180 days delinquent on debts; and was then currently 90 days past-due on debts.⁵

Applicant stated that the debt in SOR ¶ 1.a (\$970) was paid. He did not provide documentary proof of payment or resolution. He believes the debt in SOR ¶ 1.b (\$79) was for an account that was fraudulently opened by his sister-in-law. He did not provide evidence of actions he has taken to resolve or dispute the debt. He denied the debt in SOR ¶ 1.c (\$258) stating it was charged off. He did not provide information as to what actions he has taken to resolve the debt. He denied the debt in SOR ¶ 1.d (\$817) because he is unaware of what it is for. He did not provide information as to what actions he has taken to contact the creditor or dispute the debt. The debt in SOR ¶ 1.e (\$2,186) Applicant admitted, but stated he did not plan on paying it. The debt in SOR ¶ 1.f (\$25,204) is for a repossessed vehicle. Applicant admitted the debt, but stated he cannot afford to pay it.⁶ CBRs from January 2013, November 2013, and February 2015 verify the delinquent debts.⁷ Applicant's November 2013 and February 2015 CBRs reflect an account opened in May 2012 from a motorcycle company for \$14,150. It appears Applicant is current on the payments.⁸ No other information was provided about actions Applicant is taking to resolve debts or address current finances.

Policies

When evaluating an applicant's suitability for a security clearance, the 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, which are 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 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,

⁵ Items 8 and 9.

⁶ Items 2 and 8.

⁷ Items 5, 6, and 7.

⁸ Items 6 and 7.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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.

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.” 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 relating to the guideline 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. I have considered the following under AG ¶ 19:

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

Applicant has six delinquent debts totaling approximately \$29,514, which are several years old, not paid, or resolved. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

- (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 did not provide evidence of actions to pay or resolve his delinquent debts. He stated in his initial interview that he was underemployed and unemployed for a period of time, which contributed to his financial problems. In a subsequent interview, he admitted he was a heavy drinker, consumed an excessive quantity of alcohol, and did not care about the debts. His excessive drinking caused marital strife and negatively affected his finances. It was not until his brother was killed while they were both intoxicated and operating motorcycles that he stopped drinking. He did not provide evidence that he has paid any of the debts alleged in the SOR. His financial problems may be partially due to his employment issues, but they were likely exacerbated by his

indifference to paying his financial obligations. Although he indicated he is now sober, he has not provided evidence that he has taken action on his delinquent debts.

AG ¶ 20(a) does not apply because Applicant's debts are recent, did not happen under unique circumstances, and cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(b) partially applies due to Applicant's underemployment and unemployment, however that occurred six years ago and is only a partial cause of his financial problems. He has been employed since May 2009. There is no evidence he has acted responsibly under the circumstances. To the contrary, he ignored his debts while he was drinking. He did not stop drinking until February 2013. There is no evidence of financial counseling, a good-faith effort to pay or otherwise resolve debts, or a clear indication that Applicant's financial problems are under control. Applicant disputed debts, but failed to provide a reasonable basis to dispute the legitimacy of the debt or provide documented proof to substantiate the basis of or actions taken to resolve the issue. AG ¶ 20(b) partially applies. AG ¶¶ 20(c), 20(d), and 20(e) do not 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 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.

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 my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 41 years old. He experienced financial difficulties when he was underemployed and unemployed. He has been steadily employed since 2009. He admitted he ignored debts when he was drinking excessively. He has not taken action to resolve his financial problems. He provided insufficient evidence of mitigation to meet

his burden of persuasion. The record evidence leaves me with questions and doubts as to 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, financial considerations.

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.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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge