



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



In the matter of:)	
)	
)	ISCR Case: 12-00465
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

12/13/2013

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated 39 delinquent debts totaling \$23,000. At this time all SOR-listed 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 23, 2011, Applicant submitted a security clearance application (SF-86). On June 18, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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.

Applicant submitted an undated answer to the SOR requesting that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) He submitted a subsequent dated answer on July 16, 2013. (Item 7.) A complete copy of the File of Relevant Material (FORM), containing 11 Items, was mailed to Applicant that same day, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on September 20, 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 November 21, 2013.

Findings of Fact

In his responses to the SOR, Applicant admitted all 39 allegations, pertaining to delinquent debts, contained in the SOR. (Items 4, 7.)

Applicant is a 27 years old. He attended technical training and community college. He lives with his girlfriend and their three young children, ages 7, 5, and 2. From April 2004 to June 2011, he worked full-time except from June 2009 to April 2010 when he was unemployed. In June 2011 he was hired as a pipefitter for a defense contractor. In August 2011 Applicant submitted his first SF-86. (Item 5.)

In October 2011 a security investigator interviewed Applicant about his background and delinquent debts listed on a credit bureau report (CBR). During that interview, he discussed many accounts, but did not recognize several debts. He told the investigator that he intended to research those debts for which he had no knowledge. He understood the importance of resolving his credit problems. He attributed the delinquent debts to a lack of medical insurance, a significant decrease in his income over the years, a period of unemployment, and irresponsible financial choices. (Item 9.)

According to CBRs, dated September 2011 and March 2013, Applicant's delinquent debts began accumulating in 2006 and continued into 2013. Based on those CBRs, the SOR alleged 39 delinquent debts totaling \$23,000. They include unpaid judgments, defaulted credit card debts, utility bills, returned checks, and 23 unpaid medical bills. Some medical bills are listed with small amounts owed: ¶ 1.y for \$13; ¶ 1.z for \$20; ¶ 1.aa for \$29; ¶ 1.bb for \$19; ¶ 1.cc for \$30; ¶ 1.dd for \$ 63; and, ¶ 1.ee for \$99. At some time prior to the March 2013 CBR, Applicant disputed certain accounts. The outcome of those disputes is unknown. (Items 10, 11.) According to his July 2013 Answer, Applicant asserted that he paid a debt owed to a state's unemployment commission (¶ 1.q for \$600) and is paying a credit card debt (¶ 1.o for \$5,084), but did not provide evidence to confirm those payments. All debts remain unresolved.

Applicant provided a copy of his April 2013 budget. His net monthly income is \$2,384. His monthly expenses and payments on debts total \$4,087. (Item 9.) The

budget does not appear to be complete or accurate. He indicated that he has taken an on-line credit counseling course, but did not submit documentation to verify its completion or substance.

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 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 delinquent debts began accumulating in 2006 and remain unresolved. He failed to demonstrate that such problems are unlikely to continue or recur, calling into question his reliability and trustworthiness. The evidence does not support the application of AG ¶ 20(a).

Applicant provided some evidence that his financial problems arose because he experienced financial problems related to a period of unemployment and a decrease in his salary. Those were circumstances beyond his control. However, he also honestly acknowledged that some debts were the result of irresponsible financial choices, which were circumstances within his control. He did not provide evidence that he attempted to responsibly address the delinquent debts as they were accumulating, a factor that must be considered in establishing mitigation under AG ¶ 20(b). Thus, this mitigating condition has no application.

Applicant did not provide sufficient evidence that he participated in credit or financial counseling. He acknowledged that 37 of the 39 SOR-listed delinquent debts, totaling over \$23,000, remain unresolved. He provided no proof to document his assertions regarding the resolution of the other two debts. Hence, AG ¶ 20(c) has no application, as there are not clear indications that his financial problems are under control. Applicant did not provide evidence that he made a good-faith effort to resolve any debts, as required under AG ¶ 20(d). There is no evidence in the record that Applicant successfully disputed any delinquent debt owed by him. 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 27-year-old man, who began working for a defense contractor in June 2011. In October 2011 he discussed his delinquent accounts with a security investigator. He indicated that he would research the debts that were unknown to him. He acknowledged the importance of maintaining a good credit rating. In July 2013 Applicant admitted that 37 of the 39 SOR-listed debts remained unresolved. After receiving the FORM in September 2013 he was given an opportunity to submit more information pertinent to his delinquent debts, including the two that he asserted were paid or being resolved, in response to the Department's arguments regarding their unresolved status. He failed to do so, further raising questions about his personal finances, reliability, maturity, 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
Subparagraphs 1.a through 1.mm:	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