



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



In the matter of:)
)
) ISCR Case No. 12-01430
)
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: Robert A. Espinosa, Esq.

May 22, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was delinquent on three debts, in the total amount of \$49,041. He resolved one debt. Another debt was recently cancelled by the creditor, involving \$17,441. He failed to document any effort to resolve the remaining \$16,892 collection account. He has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 22, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On December 5, 2014, the Department of Defense 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective September 1, 2006.

Applicant answered the SOR on December 15, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on February 23, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 5, 2015, scheduling the hearing for April 20, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on his own behalf and offered six exhibits marked Applicant Exhibit (AE) A through F. DOHA received the transcript of the hearing (Tr.) on April 29, 2015.

Findings of Fact

Applicant is 66 years old. He has been employed in his current position with a Government contractor since February 2007. He is a former civil servant and retired from his civilian position in approximately 1999.¹ He is married and has four adult children. (GE 1; Tr. 21.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR alleged that Applicant is delinquent on three debts, in the total amount of \$49,041. In his Answer, Applicant denied each debt. The alleged debts were also listed on credit reports dated November 2, 2006; October 5, 2011; August 21, 2014; and February 2, 2015. (Answer; GE 2; GE 3; GE 4; GE 5.)

Applicant claimed that, in 2007 or 2008, his credit union's computer system was hacked into and some of his information was stolen, resulting in unauthorized charges on his credit cards involved in allegation 1.b.² He testified that he requested his credit card companies to provide him an accounting of the charges he incurred, as opposed to the charges that were fraudulently incurred, so that he could repay his legitimate debts. He never received an accounting for any of his credit cards. The credit card companies changed his interest rate from 9.9% to 28%. He testified that he stopped making payments on his credit card debts in 2009. He hired an attorney to resolve his delinquencies in approximately 2011. That attorney resolved a debt that was not alleged on the SOR. (AE E; AE F; Tr. 23-26, 34-35.)

Applicant was indebted to a bank in the amount of \$21,938, as stated in SOR allegation 1.a. Applicant opened this credit card account in February 2003. As of September 2006, Applicant owed a balance of \$17,441 on this credit card. This debt has been delinquent since at least August 2008. On December 22, 2014, Applicant received an IRS Form 1099-C, Cancellation of Debt, from this creditor, discharging \$20,452.62. Applicant was unsure if this debt was the result of being hacked. The

¹ Applicant's e-QIP failed to identify former federal civilian employment; however, his reference letters both note Federal employment.

² It was not clear from the record if he was claiming that the debts alleged in 1.a and 1.c were somehow affected by the hacking of his credit union account.

cancellation of this debt provided final resolution of this account. (GE 2; GE 3; GE 4; GE 5; AE A; Tr. 36-38.)

Applicant is indebted to a collection agent for a credit union in the amount of \$16,892, as alleged in SOR subparagraph 1.b. This debt has been delinquent since at least October 2011, and Applicant believed that this account was one of the accounts that was hacked. Applicant's April 10, 2015 credit report reflects this debt as "Collection/Charged-off." This debt is not resolved. He testified that he believed his lawyer "satisfied" this debt using the "statute of limitations." (GE 3; GE 4; AE B; Tr. 42.)

Applicant was indebted to a bank for a collection account in the amount of \$10,211, as stated in SOR allegation 1.c. Applicant opened this credit card in November 2005. As of October 2006, Applicant owed a balance of \$16,902 on this credit card. This debt was delinquent since at least April 2009. (GE 2; GE 3.) Applicant testified that he settled this debt; and presented a letter, dated May 18, 2011, that stated:

Let this confirm that the above referenced account has been settled in full.

Upon settlement of the account, and clearance of the final check, [collection agent] shall notify the creditor that the account(s) is considered settled in full, and request that they make all appropriate notifications to the credit bureaus to which they report with reference to this account." (AE C.)

Applicant failed to provide proof that the final check cleared. He testified that he paid the debt with a money order. His April 10, 2015 credit report no longer reflects this debt. His testimony with respect to this debt is credible. It is resolved. (AE C; Tr. 50, 58.)

Applicant testified that he has not received any financial counseling. He did not provide a budget or income statement. He testified that he lives paycheck to paycheck, with little left over at the end of the month. (Tr. 45-48.)

Applicant presented two letters of support from his former co-workers. They recognized Applicant for his integrity, dedication, and truthfulness. One noted that Applicant received a prestigious award in recognition of his fidelity to duty as a Federal civilian employee. (AE D.)

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 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 AG ¶ 2(a) describing 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.

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, 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 clearance 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 as to 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. Two are potentially applicable in this case:

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

Applicant was delinquent on three debts, in the total amount of \$49,041. He demonstrated both a history of not addressing his debt and an inability or unwillingness to do so over a substantial period. The evidence is sufficient to raise the above disqualifying conditions.

The following Financial Considerations mitigating conditions (MC) 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;
- (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 resolved one debt through settlement. He failed to adequately address two other delinquencies, which resulted in one debt having been charged-off and the other having been cancelled. Applicant's debts are recent, one remains unresolved in a charged-off status, and there is no indication that the circumstances under which they arose have changed. He therefore failed to fully establish substantial mitigation under MC 20(a).

Applicant offered insufficient evidence to support significant mitigation under MC 20(b). He attributed his delinquencies to the hacking of his credit union account. Only SOR allegation 1.b, can be tied to an account with that credit union. He failed to meet his burden to show how his delinquent balance of \$16,892 was directly affected by the alleged hacking. His unwillingness to resolve his two remaining debts, and instead rely on the statute of limitations or the cancellation of those debts, does not show responsible action under the circumstances.

Applicant did not undergo financial counseling. He resolved SOR allegation 1.c, and the debt in SOR allegation 1.a was cancelled by the creditor (involving \$17,441), but he failed to document any effort to resolve SOR allegation 1.b (\$16,892 owed). These facts preclude full mitigation under MC 20(c) or 20(d).

Applicant claimed to have a reasonable basis to dispute the legitimacy of several of his past-due debts because he believed them to be fraudulent. However, he failed to provide documented proof to substantiate the basis of his disputes or provide evidence of the actions he has taken to resolve those issues. MC 20(e) does not fully 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 all of 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 respected by those that wrote letters on his behalf. He resolved one debt. Another debt has been cancelled. One debt remains unresolved. Applicant had the burden to demonstrate sufficient mitigating information in this case and he has failed to meet that burden. Overall, he has not demonstrated that he has acted responsibly

with respect to his finances. His explanation with respect to the hacking of his account was confusing and did not resolve the security significance of his failure to address his debts in a responsible and timely manner. He was unable to support his claims with documentation. Applicant's inability to resolve his financial obligations raises concerns about his reliability, trustworthiness, and ability to follow rules and regulations necessary to protect classified information. Overall, 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 the whole-person concept against Applicant.

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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge