



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



In the matter of:)
)
) ISCR Case No. 12-01664
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

10/31/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On June 20, 2013, the Department of Defense (DOD) issued to 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.

Applicant answered the SOR on July 9, 2013. He elected to have his case decided on the written record. On August 20, 2013, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and

it was received on August 26, 2013. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on October 17, 2013.

Findings of Fact

Applicant denied the allegations in SOR ¶¶ 1.b and 1.e and admitted the remaining allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 43 years old. He is a high school graduate. He served in the Air Force from 1989 to 1995 and was honorably discharged. He was married from 1989 to December 2009. He has two children from the marriage, ages 24 and 21. He remarried in 2010 and has a three-year-old child and a twelve-year-old stepchild. He has worked for his present employer, a federal contractor, since October 2008. Prior to then he was employed in the commercial sector from December 2004 through April 2008. He did not list any periods of unemployment on his security clearance application (SCA).

In June 2003, Applicant had his delinquent debts discharged in Chapter 7 bankruptcy. The amount that was discharged is unknown. In his sworn statement to government investigators in September 2002, Applicant explained he and his first wife were struggling financially when they had their debts discharged. He explained they had financial problems dating back to about 1997.

Applicant denied he owes the debt in SOR ¶ 1.b (\$452). He indicated in his answer to the SOR that the debt was paid. The debt became delinquent in 2010. Applicant acknowledged the debt during his November 2011 interview with a government investigator and indicated he would resolve the debt through a repayment plan. He provided a copy of a statement from the creditor, dated June 17, 2013, showing that he established a payment agreement with the creditor in May 2013. The letter shows that Applicant was delinquent on his \$100 installment payment that was due on June 7, 2013. The statement shows a balance owed of \$401. Applicant did not provide documents from the creditor confirming he made monthly payments or paid the debt in full.¹

Applicant admitted the debt in SOR ¶ 1.c (\$437). He did not provide information as to what steps he has taken to resolve the debt. In his November 2011 interview with a government investigator, he stated he believed this debt is associated with knee surgery he had, and he planned to satisfy the account. In his answer to the SOR, he indicated he did not know what the debt was for and had difficulty finding the creditor.²

The debt in SOR ¶ 1.d (\$15,825) is for the loan balance on a repossessed vehicle. In his November 2011 interview with a government investigator, Applicant

¹ Item 4 at pages 4, 6, Item 6.

² Item 4 at page 6, Item 6 at page 10.

indicated he would contact the creditor to make payment arrangements to resolve the debt. In his answer to the SOR in July 2013, he indicated he had contacted the creditor and was offered two payment options, but is waiting for the creditor to provide him an amount he can afford to pay. He did not provide any additional information to show he has started making monthly payments to resolve the debt.³

Applicant provided a document dated June 25, 2013, showing the debt in SOR ¶ 1.e (\$1,358) was settled and the account is closed.⁴

Applicant's personal financial statement (PFS) shows he has a net monthly remainder of \$2,675. It does not show he is making payments toward any of the delinquent debts. He did not list any savings or other assets. There is no evidence Applicant has sought financial counseling. In his interview with a Government investigator, he explained that his financial hardships are due to his 2009 divorce and poor money management decisions.⁵

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, 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.

³ Item 4 at page 5, Item 6 at page 2.

⁴ Item 4 at page 3.

⁵ Item 6 at page 11.

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 had debts discharged in bankruptcy and has three delinquent debts totaling approximately \$16,600 that he is unable or unwilling to pay. 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 provided documented proof that he settled and resolved the debt in SOR ¶ 1.e. He stated he paid the debt in SOR ¶ 1.b, but the document he provided does not support the debt is paid. He indicated in his 2011 interview that he was resolving the delinquent debts in SOR ¶¶ 1.c and 1.d, but he has failed to provide proof the debts are being paid or resolved. AG ¶ 20(a) does not apply because Applicant continues to have delinquent debts that are unpaid or resolved. His history of financial problems is likely to recur and casts doubt on his reliability, trustworthiness, and good judgment.

Applicant attributed his financial problems to divorce and poor money management decisions. Applicant's divorce was beyond his control. His poor financial decisions were within his control. For the full application of AG ¶ 20(b), Applicant must show he acted responsibly under the circumstances. It has been almost four years since Applicant's divorce. He has not had any periods of unemployment. He has a net monthly remainder of \$2,675 and his PFS shows he is not making any payments toward his delinquent debts. There is no evidence to show Applicant was acting responsibly under the circumstances. I find AG ¶ 20(b) only partially applies.

No information was provided about whether Applicant has received financial counseling. At this time, there are not clear indications his financial problems are being

resolved or under control. I find AG ¶ 20(c) does not apply. Applicant provided documentation to show he resolved the debt in SOR ¶ 1.e. I find AG ¶ 20(d) applies to that debt. Applicant disputed the debt in SOR ¶ 1.b, but his document acknowledged he owed the debt, but failed to show he has resolved it. AG ¶ 20(e) does 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 43 years old. He served honorably in the Air Force. He has a history of financial difficulties dating back to 1997. He had delinquent debts discharged in bankruptcy in 2003. He did not list any periods of unemployment. He attributes his financial difficulties to his 2009 divorce and poor money management. Applicant was made aware during his 2011 interview that his delinquent debts were a security concern. He expressed his intention to resolve his delinquent debts. He resolved one delinquent debt, but the others remain unpaid. He has a net monthly remainder of \$2,675. His PFS indicated he is not making any payments to the creditors he owes and he has no money in savings. He did not provide any information regarding how he spends the remainder of his income. Applicant has failed 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.d:	Against Applicant
Subparagraph 1.e:	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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge