



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



In the matter of:)	
)	
)	ISCR Case No. 12-01863
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

January 9, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has four delinquent debts totaling \$61,960, identified on the Statement of Reasons (SOR). All of these debts remain delinquent. Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his electronic Security Clearance Application (e-QIP) on September 22, 2012. On August 22, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the guideline for 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 after September 1, 2006.

Applicant answered the SOR (Answer) on September 25, 2013, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on October 31, 2013. A notice of hearing was issued to Applicant on October 31, 2013, scheduling a hearing for November 14, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified on his own behalf, and offered Applicant's Exhibits (AE) A through G, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 21, 2013. The record was left open for receipt of additional documentation and Applicant's closing statement. On January 2, 2014, Applicant presented a written closing statement and AE H through AE R. Department Counsel had no objection to AE H through AE R and they were admitted into evidence. The record was then closed.

Findings of Fact

Applicant is 50 years old. He is married to his second wife. He has a daughter and two stepsons. He served in the Air Force from 1988 to 2009 and reached the rank of master sergeant, E7. He testified he has held a security clearance in connection with his military service for 20 years without incident. He has worked for his current employer since 2011. (GE 1; AE H; Tr. 23-24, 41-47.)

Applicant presented one character reference letter from his site manager, who opined that Applicant "is an outstanding performer and an impressive individual" of "unquestionable loyalty." Applicant produced performance evaluations that reflect he is an "excellent performer" and an "exceptionally effective leader," while serving in the Air Force. He was awarded two Joint Service Commendation Medals; two Air Force Commendation Medals; and two Meritorious Service Medals. (AE A; AE B; AE L; Tr. 37, 45.)

Financial Considerations

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 identified four delinquent debts totaling \$61,960. Applicant's debts appear in credit reports entered into evidence. Applicant admitted the debts as alleged in subparagraphs 1.a through 1.d. (Answer; GE 2; GE 3; GE 4; GE 5; GE 6; GE 7.)

Applicant attributed his debts to a period of unemployment extending from September 2009 when he retired from the Air Force, to March 2011 when he was hired by his present employer. When he retired from the Air Force, he planned to take a position with a local company, but the company relocated and the position was no longer available. From September 2009 to March 2011, Applicant and his wife supported themselves on the meager profits from her bakery business and his military retirement pay, while he looked for work. Their income dropped by approximately two thirds. His wife closed her bakery in October 2012 due to health problems and the

declining economy and is currently unemployed. He testified he has actively been working to pay off the debt he incurred during the period of his unemployment since he was hired in 2011. Applicant's credit score had risen from 550 in January 2011 to 636 in September 2013. (GE 2; AE D; AE E; AE F; AE H; Tr. 24-25, 36-41, 46-48.)

The status of his debts, as listed on the SOR, is as follows:

Applicant is indebted to a homeowner's association (HOA) on three judgments filed against him in the amounts of \$709, \$646, and \$803, as alleged in SOR subparagraphs 1.a, 1.b, and 1.c, respectively. Applicant testified that he purchased a home in 2002 in another state, which he rents to tenants. All three judgments against him were the result of his failure to pay HOA dues on the rented property shortly after becoming unemployed. He testified that his HOA dues of \$300 are due every six months. He indicated he paid his HOA dues since becoming employed, but has not had the funds available to repay the HOA dues, interest, and fees for the period he was unemployed. He contacted the collection agent for the creditor and offered to make payments, but the creditor wanted a lump-sum payment to settle the debt. In Applicant's post-hearing documents, he presented documentation that the collection agent filed a Garnishment Summons and that the rent payments from his tenant would be garnished by the court for the amount of \$1,372.41 to satisfy these debts. Applicant indicated that he recently received a bonus of \$4,000 and "set aside a portion of [his] bonus . . . to resolve these debts" however, he failed to submit proof he made any payments on the debts. The hearing date for the Garnishment Summons was set for May 20, 2014. These debts remains unresolved. (AE C; AE H; AE M; AE O; AE Q; AE R; Tr. 26, 28-30, 37, 48-56.)

Applicant is also indebted on a home equity line of credit (HELOC) loan in the amount of \$59,802. This debt is for the second mortgage on his rental property with an original principal balance of \$60,000. He is in good standing on his first mortgage on the rental property after rehabilitating that loan through payments, but is delinquent on the HELOC. He testified he became delinquent when the rental property required costly repairs during his period of unemployment. The company that held the HELOC filed for bankruptcy and Applicant had difficulties communicating with them after he became employed due to their bankruptcy. In February 2013 Applicant was contacted by a collection agent regarding this debt. In April 2013 the collection agent sent Applicant "a payment coupon" but Applicant did not submit payment at that time. He indicated he and his wife were discussing the sale of the rental property. However, they found there was not enough equity in the property to ensure a sale would cover all of their debts so they postponed the sale. They intend to list the property for sale in spring of 2014. Applicant recently has contacted this collection agent. The collection agent indicated to Applicant that it would be willing to settle the debt for a \$15,000 to \$17,000 lump-sum payment. Applicant does not have the funds available to settle this debt. He sent this creditor one payment of \$499.26 in October 2013, but has not made any payments since then. He did submit a payoff offer to the creditor, but a letter dated December 18, 2013, from the collection agent rejected Applicant's offer. This debt is unresolved. (GE 3; AE G; AE N; Tr. 25, 27-36, 50-53.)

Applicant's personal financial statement dated July 7, 2013, indicated that he had a remainder of \$605 after meeting his monthly obligations. He testified that his present income is enough to manage his current financial obligations. (GE 3; Tr. 59.)

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 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 national security." In reaching the 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. The 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 has had financial problems since at least September 2009. All of his SOR-listed debts remain unresolved. Applicant has the means to make payments on or fully resolve these debts, given his monthly surplus of \$605 and his bonus of \$4,000. However, he failed to produce evidence that he is resolving his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations mitigating conditions 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's four delinquent debts began accumulating in 2009. All of these 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 evidence that his delinquent debts arose because he experienced unemployment from September 2009 to March 2011. 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 or since he gained his present employment, 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 all of SOR-listed delinquent debts, totaling \$61,960, 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. Further, while I acknowledge that he has been in contact with his creditors and made a single \$499 payment on his HELOC, he did not provide sufficient evidence that he is making good-faith effort to resolve his debts as required under AG ¶ 20(d).

Applicant failed to present documentary evidence to show that he was in the process of formally disputing any of his debts. AG ¶ 20(e) is inapplicable.

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 pertinent 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 a hardworking and dedicated employee who performs well on the job. He served honorably in the Air Force. However, Applicant failed to produce sufficient documentation that his delinquent debts have been addressed or are otherwise being satisfied. He has not mitigated the Financial Considerations security concerns. He has gone through the security clearance process in the past, as he held a clearance for 20 years during his military service, and has been on notice that financial delinquencies are a concern to the government. However, he chose to disregard this concern. He has made preliminary steps toward contacting his creditors and establishing terms on which his creditors will accept settlements, but has not yet established "significant actions to implement that plan." See ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). 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 Applicant has not mitigated the Financial Considerations security concerns.

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

Jennifer I. Goldstein
Administrative Judge