



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



In the matter of:)	
)	
)	ISCR Case No. 12-02817
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

01/29/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On February 28, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on August 22, 2014. Applicant was abroad at the time and a postponement for good cause was issued. A notice of hearing was issued on August 22, 2014, scheduling the hearing for December 18, 2014. Government Exhibits (GX) 1-7 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-F, which were admitted without objection. I kept the record open and Applicant timely submitted a packet of additional documents, which was marked as AX G. The transcript was received on January 7,

2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations under Guideline F with explanations, with the exception of two, SOR ¶¶ 1.h and 1.j.

Applicant is a 60-year-old aircraft mechanic. After graduation from high school, he served in the U.S. Air Force from 1973 until 1977. Applicant served in the Air National Guard from 1981 to 2004. He has held a security clearance for more than 30 years. Applicant completed two years of college, but he has not obtained a degree. He is twice divorced, and married his current wife in 1996. He has one adult son and five stepchildren. Since 2010 he has been living abroad. (GX 1).

The SOR alleges ten delinquent accounts in the amount of about \$19,000. Applicant stated in his answer to the SOR that according to his latest credit report he has no account in collections. He elaborated that five of his accounts had been satisfied either by paying them or by being removed from his credit report. (Tr.13; AX A) He emphasized in his answer that all the accounts were closed or charged-off and he just sent a letter to settle the accounts. He noted that his net income is now double what it was five years ago. He acknowledged that he filed Chapter 7 bankruptcy in 2001 for an approximate amount of \$90,000 in nonpriority unsecured debt. (Tr. 52; GX 6)

Applicant's wife became ill in 2009. She is disabled and cannot work. (Tr. 28) She is in the process of filing for disability. Applicant's family lost her annual income of \$45,000 when she became unemployed. At the time, he earned about \$65,000 annually. He incurred some delinquent debts. His wife also used credit cards, and she did not pay the balances. He also helped his adult children in their time of need. Applicant believes he spent about \$32,000 or more for his children. (Tr. 35; AX G)

Applicant contacted a law firm in 2010. (GX 4) He signed an agreement with the firm for the purpose of having them negotiate settlements for his delinquent debts. He believes he has about \$6,000 in the account, and the law firm receives \$307 a month from Applicant. He stated that he has not received any information from the group in at least six months. He did not have a list of any accounts that had been settled. (Tr. 42) He noted that he stopped paying his delinquent accounts as soon as he contacted the law firm. Applicant also stated that in his recent international move, he lost documents. (Tr. 70)

Applicant was interviewed in 2011. In his answers to 2013 interrogatories, he maintained that all credit cards were paid or charged off. (GX 4) At first he stated that he believed he was not responsible for the debts if they were charged off. Later, he admitted that he was financially responsible.

Applicant maintained that the original account holder alleged in SOR 1.a (\$2,162) may be paid or in a payment plan. He has not contacted the creditor to

negotiate a settlement amount. He intends to contact them soon. As a post-hearing submission, Applicant provided documentation that on January 8, 2015, he made a payment of \$1,232.91. (AX G) There is no clear indication whether this sum resulted in settlement of this debt.

Applicant provided a post-hearing submission for the alleged debts in SOR 1.b and 1.c. He submitted a copy of his bank debit statement showing two checks. One in the amount of \$1,800 and the other in the amount of \$1,700. The transactions were made in December 2014. He did not provide documentation that these accounts were actually settled for these amounts. The two collection accounts originally totaled about \$6,000.

Applicant believes the account alleged in SOR 1.d for \$2,416 is charged off. As a post-hearing submission he sent a copy of a check in the amount of \$1,500. It is not clear from the documentation that the account is settled for that amount. (AX G)

As to the debts alleged in SOR 1.e, 1.f, and 1.h, Applicant believes he settled the debts. He did not provide any documentation to confirm his claim, except for 1.h. However, it appears that the law firm settled two accounts that match the debts in 1.e and 1.f. (Tr. 77)

The account in 1.g (\$3,015) had not been addressed prior to the hearing. As a post-hearing submission, Applicant sent a settlement agreement letter, dated January 6, 2015, with a check for a settlement payment in the amount of \$1,507. (AX G)

As to the debt in SOR 1.i for \$1,326, Applicant did not settle the debt, but relies on the fact that it is no longer listed on his credit report. (Tr. 45)

Applicant denied the debt alleged in the SOR 1.j. (\$400) He stated that he never had an account with the company. (Tr. 46) Upon further questioning, he recognized the account, but he has a dispute about the validity of the debt. (Tr. 48)

Applicant submitted his December 2014 credit report (AX A) and pay stubs from his current company. (AX B) He has a retirement savings plan. (AX D) Applicant's two credit union accounts total approximately \$28,000 (AX E-F) His net monthly income is \$17,000. (Tr. 29) He also has a military retirement in the amount of \$10,000 per year. He submitted a budget as a post-hearing submission. (AX G) According to the budget Applicant sent as a post-hearing submission, his net monthly remainder is \$6,000. (AX G) However, at the hearing, Applicant stated that after expenses, it was \$12,000 to \$13,000. (Tr. 33) Applicant and his wife have between them about eight to ten credit cards. The balance is less than \$10,000. (Tr. 36)

Applicant submitted three favorable letters of reference and his work evaluations from 2009 through 2012. (AX G) Each letter attests to Applicant's good work ethic and strong leadership abilities. He is described as a loyal and trustworthy person. His performance evaluations rate him as "exceeds standards."

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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." ⁴ "The clearly consistent standard indicates that security clearance

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted he owes delinquent debt as reported in his SOR. Some of the debts have been ongoing for the last ten to twelve years. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant’s wife became disabled in 2009, and she has not been able to work. The debts have been ongoing since then. There are still unresolved debts. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant did experience a reduction of income from the loss of his wife’s salary. In 2010, he contacted a law firm so that they could settle his debts. However, he did not keep track of the settlements. Nor did he contact creditors. Granted, he was living abroad, but he did not act responsibly. He admits that he

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

procrastinated. The recent payments were made after the hearing. I find that he has not acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant took some steps starting in 2010 to settle debts. FC MC AG ¶ 20(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) 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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 60 years old. He served in the military and supports his family. Applicant has held a security clearance without incident for more than 30 years. His wife can no longer work. However, Applicant's income has increased greatly in the past few years.

Applicant has not shown sound judgment and reliability with respect to his finances. He has not persuaded me that he refuted and mitigated the Government's case concerning security concerns under the financial considerations guideline. He provided some evidence of recent payments to his creditors. However, this evidence was insufficient. He did not establish resolution of his delinquent SOR debts. He has the discretionary income to pay, but he has procrastinated until the security clearance issue was before him. Any doubts must be resolved in favor of the Government. He has not met his burden of proof.

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-1.j:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge