



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



In the matter of:)	
)	
-----)	ISCR Case No. 12-03089
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

10/15/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), dated March 7, 2014, 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 (AG) effective within the DOD on September 1, 2006.

In a May 3, 2014, response, Applicant admitted six of eight SOR allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned this case on August 1, 2014. DOHA issued a notice of hearing on August 15, 2014, setting the hearing for September 11, 2014.

The hearing was convened as scheduled. The Government offered seven documents, which were accepted as Exhibits (EX) 1-6, and one hearing exhibit (HE I) without objection. Applicant offered testimony and two documents, which were accepted

without objection as Exhibits (EX) A-B. He was given until September 22, 2014, to submit additional materials. The transcript of the proceedings (Tr.) was received on September 25, 2014. On September 30, 2014, the Government confirmed that no additional information had been received from Applicant. The record was then closed. Based on my review of the testimony and materials, I find that Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 43-year-old senior provider of technical support for a defense contractor. He has worked continuously in the same position for the past decade and for the same employer for the past 14 years. He earns \$60,000 a year. Applicant has a bachelor's degree in mechanical engineering. He is single and has no children. Applicant has not received financial counseling. A 2008 back injury led to his acquisition of medical debt. (Tr. 27)

At issue in this case is approximately \$7,235 in delinquent debt. The eight adverse accounts comprising this debt are as follows:

1.a – Medical – \$94 - Delinquent since 2008. Applicant disputed this debt with the provider by telephone in 2008 or 2009. No further action was attempted by Applicant. It remains unresolved. (Tr. 27-29)

1.b -- Medical - \$78 - Delinquent since 2012. Applicant generally disputes this orthopedist's bill balance, but has not done so in writing. He disputed it with the provider by phone in 2011 because he believed the amount should have been covered by his health insurer. No further action has been taken. It remains unaddressed. (Tr. 30-33)

1.c – Credit Card - \$1,184 – Delinquent since 2008. This unpaid debt is related to a furniture purchase. It arose after he broke up with a female companion after a number of years and had to start over in his own dwelling. The delinquent debt was eventually referred for collection. Applicant testified that he wrote the collection agent in 2012, requesting to see a summary of the charges. He stated that he has not received a response from the collection agent. He has not reinitiated contact with the collection agent or the underlying creditor. No further action has been taken. Applicant hopes to negotiate a settlement on this account for the principal minus fees. (Tr. 33-36)

1.d – Credit Card - \$4,229 – Delinquent since 2012. Applicant had been making payments on this credit card. Then he had some financial difficulty in 2012 that coincided with a wave of layoffs at his workplace. This followed a period of time in a detoxification facility to address alcohol abuse, which had been an issue for a couple of years. (Tr. 39) These circumstances caused Applicant to be “careless with [his] finances” and “non-attentive, basically” because he was focusing on his recovery. (Tr. 39) Applicant concedes he has not made any progress toward addressing this debt. (Tr. 41) In July 2014, a few months after receiving the SOR, Applicant requested an itemized breakdown of the balance reflected in order to discover the amount of the

underlying principal and start negotiating a settlement. No evidence of a negotiation was provided.

1.e, 1.f – Telecommunications Provider - \$178, \$330 – Delinquent since 2010. Applicant cannot show that these two accounts are duplicative. He does not recall having two accounts with this provider simultaneously. Applicant has not been in contact with this creditor. (Tr. 42) He does not dispute that the debts are his.

1.g – Medical - \$1,072 – Delinquent since 2011. This debt is related to Applicant's detoxification program. It represents his balance owed for the process. (Tr. 44) He has not made any payments toward his treatment since 2011, nor has he been in contact with this creditor. (Tr. 44)

1.h – Telecommunications Provider - \$70 – Delinquent since 2011. Applicant switched providers. When he left one provider for the other, he had a zero balance on the former provider's account. This charge appeared soon thereafter, which Applicant disputes. When informed by investigators of this debt in early 2012, Applicant said he would address it. Applicant does not recall contacting this entity or attempting to settle the matter. (Tr. 46)

Applicant has no outstanding federal or state tax issues. He lives within his means with an income of \$60,000 a year. He has a monthly net income of about \$3,400, and his expenses amount to about \$2,200. This leaves him approximately \$1,200 a month to devote toward the approximately \$7,235 at issue. Only one of the debts at issue (1.d) exceeds \$1,200. Applicant maintains a savings and a checking account, as well as an employer-based retirement account. With regard to the eight debts at issue in the SOR, it is his plan to address them by negotiating settlements. (Tr. 57) He is waiting for offers to settle them for lesser amounts, as he has done with other debts in the past. (Tr. 58) Such offers have not been forthcoming. When it was noted that some of his debts dated back to the mid-2000s, Applicant explained his delay in addressing these debts as being the result of:

what we call the fear of economic insecurities that's been driving me, not really being head-on with it. And I've just basically, through experience, I've heard of other people trying to get a negotiating position rather than - - I've been reluctant to call them up on the phone because they're better at dealing, talking, negotiating on the phone than I am. (Tr. 57-58)

Applicant concedes he has the financial resources to satisfy these debts in a reasonable time. Indeed, he noted that between his bank accounts and his 401(k), he had "about \$7,000" available "at this moment" to satisfy the \$7,235 at issue. (Tr. 60) When asked why he has not recently contacted any of the creditors noted except the one at 1.d, Applicant stated, "I don't have an answer for that." (Tr. 62) He stated that he has not received any settlement offers from the creditors noted in the SOR. During the September 11, 2014, hearing, Applicant requested that the record be held open until

September 22, 2014, so he could supplement the record. His request was granted without objection. As of September 30, 2014, no additional materials were forthcoming.

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 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 not drawn 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, 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 to obtain 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 the applicant may deliberately or inadvertently fail to safeguard 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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced evidence indicating Applicant owed eight delinquent debts amounting to approximately \$7,235. Each debt had become delinquent at some point between 2008 and 2012. No progress has been made on any of the cited debts. Applicant's testimony indicates little effort has been exerted since the issuance of the 2014 SOR to hasten action on the debts identified. Such facts are sufficient to raise financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate the finance-related security concerns in this case:

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;

AG ¶ 20(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;

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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 has not received financial counseling. He has the financial resources to address all of the debts at issue, but has not done so. He prefers to settle his debts for less than the values alleged as owed. To that end, he is waiting for his creditors to initiate settlement negotiations with him; his passivity has been unsuccessful. Otherwise, Applicant has basically neglected or failed to follow through with any efforts to address these debts. Moreover, although Applicant has had back issues and a period in a detoxification unit, he failed to show how either situation resulted in an economic condition beyond his control. He has not formally disputed any of the debts noted. Most importantly, there is no evidence that the problem is being resolved.

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). 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.

The delinquent debt in this case is relatively minimal, given applicant's income, expenses, and financial resources. He has chosen not to satisfy any of the debts at their face value, including, apparently, those debts amounting to under \$100. By his own admission, he has the financial resources to satisfy the entire \$7,235 "at this moment."

Rather, Applicant has devised an unusual scheme in which he waits passively, neglecting his debts, and awaiting settlement offers from his creditors for debts which became delinquent between 2008 and 2012. He is otherwise reluctant to forge ahead with repayments due to "fear of economic insecurities" that do not appear likely to be resolved in the foreseeable future. This scheme does not reflect the sound judgment, responsibility, and reliability one expects of an individual seeking to maintain a security clearance. While this process does not expect an individual to blindly pay all debts in full as a matter of rote or without a financial strategy, it does expect an Applicant to employ a plan that has a reasonably certain end. Here, Applicant's predicate that initial action will be first taken by his creditors is based on an uncertain assumption that settlement offers will be forthcoming.

Applicant requested the record be kept open for an additional 11 days. In that period, no additional materials were offered and, presumably, no ameliorative action was initiated. When the record was closed an additional eight days later, the record was still devoid of supplementation. Absent some evidence that Applicant is actively working

on addressing his debts, financial considerations security concerns remain sustained. Clearance is denied.

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.h:	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. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge