



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



In the matter of:)	
)	
)	ISCR Case No. 12-03250
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

05/14/2014

Decision

LYNCH, Noreen A., Administrative Judge:

On November 6, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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; 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 an administrative determination in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated November 6, 2013.¹ Applicant received the FORM on February 27, 2014. He did not submit additional information for the record. I received the case assignment on May 12, 2014. Based on a review of the case file, I find Applicant has not mitigated the security concerns raised. Security clearance is denied.

¹The Government submitted nine items in support of its case.

Findings of Fact

In his answer to the SOR, Applicant admitted all allegations under Guideline F, ¶¶ 1.a. through 1.w., with explanations. (Item 4)

Applicant is 30 years old. He is a production support specialist with a defense contractor. He completed his high school education in 2001. He has taken college courses since 2006, but has not obtained a degree. Applicant is married, and he has two children. (Item 5) From September 2001 until September 2005, he served on active duty in the Navy. He was honorably discharged. Applicant has been employed with his current employer since March 2011. On January 5, 2012, he completed a security clearance application. (Item 5)

The SOR alleges 23 delinquent debts totaling approximately \$16,225. These include collection accounts, medical accounts, and student loan accounts. (Items 7, 8 and 9) Credit reports confirm the debts.

Applicant explained in his Answer, that when he completed his 2012 security clearance application, he was the only member of the household working, but his spouse recently started employment.² He emphasized that he planned to take action on all accounts after the first of the year. He did not provide documentary evidence of any payments.

When Applicant completed responses to DOHA interrogatories, he was candid that he had not made payments on the SOR debts listed. He told the investigators in 2012 that his financial problems were “just due to lack of income and lots of student loans.” (Item 6)

Applicant’s personal financial statement shows that his total monthly net income is approximately \$2,130. He estimates that his total household expenses are about \$2,167. He did not list any payments on debts. He has a negative net monthly remainder of approximately \$36. (Item 7) He has not received financial counseling or assistance with financial planning. (Item 6)

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.

²Applicant listed unemployment from November 2009 until July 2010 and May 2007 to June 2007. However, he noted that he was supported by his spouse and used his savings.

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 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. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ 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.

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

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

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

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

⁸ *Id.*

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. "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."

Applicant's admissions and credit reports establish his delinquent debts in the amount of \$16,225. 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.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant still has a significant amount of delinquent debt. The delinquent obligations remain. 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.

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 not provide information to prove that the delinquencies were beyond his control and that he acted responsibly. He had periods of unemployment, but he did not show a nexus between the unemployment and his inability or unwillingness to pay on the delinquent accounts. He has not indicated that he has a plan to pay his bills. He has not contacted his creditors.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant has failed to provide documentation to show that he has a plan for the remaining delinquent debts. He did not present evidence that he received financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. I find that there are not clear indications that his financial problems are being resolved and are under control. He has not met his burden of proof.

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 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. 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 30 years old. He has worked for his current employer since 2011. Applicant has held a security clearance. Applicant served in the military and received an honorable discharge. While he made reference to his unemployment, he failed to provide any specific information connecting his financial indebtedness to circumstances beyond his control. Moreover, he did not demonstrate that he has taken responsible steps toward the resolution of his debts. He has not provided sufficient evidence or documentation to warrant mitigation in this case.

Applicant steady employment, with the exception of two short periods of unemployment, creates significant doubts about the eventual resolution of the SOR debts and his overall solvency and financial integrity. Since his interview in 2012, he has not put a plan in place to address his financial issues. His pattern of financial irresponsibility and his failure to take action to resolve his debts do not show good judgment or reliability.

The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. A denial of his security clearance does not necessarily indicate anything adverse about an applicant's character or loyalty. It means that the individual has presented insufficient mitigation to meet the strict standards controlling access to classified information.

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.w:	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