



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



In the matter of:)	
)	
)	ISCR Case No. 12-03258
)	
Applicant for Security Clearance)	

Appearances

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

03/18/2014

Decision

LYNCH, Noreen A., Administrative Judge:

On September 11, 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 7, 2013.¹ Applicant received the FORM on November 13, 2013. He did not submit additional information for the record. On January 15, 2014, Department Counsel sent a letter to Applicant advising him that a current copy of the adjudicative guidelines was mailed to him and that he had 30 days

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

to respond if he had any additional matters to present in response to the FORM.² I received the case assignment on March 11, 2014. Based on a review of the case file, I find Applicant has not mitigated the security concerns raised. Security clearance is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted all allegations under Guideline F, ¶¶ 1.a through 1.e., with explanations. (Item 2)

Applicant is 48 years old. He is an engineering support specialist employed by a defense contractor. He completed his high school education in 1984. Applicant is married, and he has three children and one stepchild. (Item 3) Applicant has been employed with his current employer since March 2001, and he has held a security clearance since that time. On September 29, 2011, he completed a security clearance application. (Item 3)

The SOR lists a 2003 Chapter 13 bankruptcy and four delinquent debts totaling about \$16,499. (Items 7 and 8) His credit reports confirm the debts. The bankruptcy was discharged as a “no asset” Chapter 7 bankruptcy.

Applicant explained that his wife became ill, her business failed, and they lost their home to foreclosure. Applicant was unemployed from August 1996 until March 1997. They wanted to pay their bills, but were forced to file for bankruptcy in 2003. (Answer to FORM; Item 2)

When Applicant completed responses to DOHA interrogatories, he was candid that he had taken “no action” on the SOR debts listed. He noted that because two accounts were charged off, he did not currently owe or consider them as debts. (Item 5)

With respect to SOR allegation 1.a, Applicant admits that he and his wife filed for Chapter 13 bankruptcy in 2003. (Item 6) The bankruptcy was discharged as a Chapter 7 bankruptcy in November 2003 due to no assets. Applicant’s wife had a business, which failed in 2002. When she became unemployed, they were no longer able to maintain payments on their home, and in 2004 the home went to foreclosure. (Item 5)

Applicant admitted the debt in SOR 1.b (\$2,421). His 2013 Experian credit report confirms that the debt has been delinquent since 2008. Applicant did not provide any documentation to support that he has made any payments on this debt or that he has a plan to repay the debt.

The alleged debt in SOR 1.c (\$4,175) is unpaid. Applicant responded to DOHA interrogatories that no action has been taken on this debt. The debt is the result of a special bed for his wife due to her health needs. (Item 2)

²The January 15, 2014 letter was marked as Hearing Ex. I for the file.

Applicant claimed that the debt in SOR 1.d (\$8,507) is the result of a vehicle loan that he cosigned for his son. The credit report notes that the debt is from 2007. (Item 8) Applicant did not provide any evidence to support payments made to resolve the debt.

The debt alleged in SOR 1.e (\$1,396) is a medical account in collection since 2010. Applicant provided no documentation to show that any payments have been made on this account.

Applicant states that he receives \$300 a month from his mother-in-law who lives with his family. His monthly net income is approximately \$3,931. He estimates that his total household expenses are about \$2,022. He has a car payment and other credit card monthly accounts. He has a net monthly remainder of approximately \$360.

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 United States 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

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).

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.

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, as well as his 2003 Chapter 7 bankruptcy. His credit reports confirm these debts. 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.

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.*

The nature, frequency, and relative recency of Applicant's financial difficulties since 2003 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.

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 not provide information to prove that the delinquencies were beyond his control and that he acted responsibly. His wife was ill and could not work, but he did not show a nexus between the medical issues and his inability or unwillingness to pay on the accounts that have been delinquent for at least four years. 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. FC MC 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 48 years old. He has worked for his current employer since 2001. Applicant has held a security clearance. Applicant made references to his wife's medical issues and periods of unemployment; however, he fails 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.

He was unemployed and had medical accounts that were the result of his wife's illness, but he did not explain the nexus between the debts and his situation. 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 immediate action to resolve his debts does not show good judgment or reliability. Applicant has not mitigated his case.

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. 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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

