



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-03595

Appearances

For Government: Allison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

04/30/2014

Decision

HOWE, Philip S., Administrative Judge:

On October 18, 2011, Applicant submitted his electronic version of the Security Clearance Application (e-QIP). On November 25, 2013, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 Department of Defense on September 1, 2006.

Applicant received the SOR on December 8, 2013. Applicant answered the SOR in writing on December 10, 2013. Applicant admitted the four allegations. Applicant requested his case be decided on the written record in lieu of a hearing. He

subsequently submitted a second answer that was undated. It stated that each debt in the SOR he affirmed and had included in a recent Chapter 7 bankruptcy.

On February 26, 2014, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on February 27, 2014. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on March 5, 2014. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on April 4, 2014. I received the case assignment on April 10, 2014. Based upon a review of the complete pleadings and exhibits, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by deleting ¶ 1.b, alleging Applicant owed \$9,600 on a credit card. This motion was granted. The remaining three allegations are the subject of this decision.

Findings of Fact

Applicant admitted all the allegations in the SOR. (Items 2-6)

Applicant is 57 years old, married, and has two adult children. He served in the Air Force on active duty starting in 1976 and subsequently in the Air Force Reserves and Air National Guard. He retired in 2002 and receives a reserve pension monthly. His wife is not employed. Applicant's monthly income according to the Chapter 7 bankruptcy documents is \$7,103. He owns two houses, in two separate states. He moved to the second state when he found a new contractor position after being laid off from his previous position. He has mortgages on each home. He leased the first home for a while but claims he had trouble with the renters and had to evict them. He purchased the second house when he moved to that state with his new contractor position. The former residence has two mortgages totaling \$177,407. The second home has one mortgage on it of \$217,271. The total amount Applicant owes on these three mortgages is \$394,678. His monthly payments are \$2,663.24 according to his bankruptcy documents filed in October 2013. (Items 4, 8-15)

The SOR alleges Applicant owes two delinquent debts and filed a Chapter 7 bankruptcy on October 4, 2013. The first debt is for \$15,833 (Subparagraph 1.a). The second debt is for a line of credit owed to a bank in the amount of \$49,048

(Subparagraph 1.c). These two debts total \$64,881. Applicant's Answer states these debts are included in his latest bankruptcy. The second debt is clearly stated in the latest bankruptcy filings. The first debt is not listed under the creditor named in the SOR. Applicant admits these two debts. (Items 1-15)

Applicant filed a Chapter 13 bankruptcy on June 20, 1986. It was discharged in July 1991. He later filed a Chapter 7 bankruptcy on April 17, 1997. That petition was granted and discharged his debts in August 1997. Applicant's third and latest bankruptcy was a Chapter 7 bankruptcy for about \$56,000 of debts filed on July 10, 2013. He was discharged in January 2014. His two homes are listed as secured debts and Applicant retained them after the bankruptcy. (Items 12-15)

Applicant claims his financial problems started when his wife needed surgery and could no longer work. He did not supply any documents pertaining to that medical treatment. His latest bankruptcy petition shows she receives Social Security disability payments. Applicant also asserts he tried to resolve his debts using a debt management service. He states he paid them over \$20,000 during a two year period. They did not resolve any of his debts and later transferred his account to a subsidiary which later went bankrupt. Applicant did not supply any documents or other objective information to verify these assertions. (Items 12-15)

Applicant declared he was unemployed from June 2013 to September 2013. Applicant claims he was affected by the government budget cuts and layoffs. He did not submit any documents to support his assertion. He did not demonstrate how this short period of unemployment adversely affected his ability to pay his mortgages and delinquent debts. (Items 1-15)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 useful 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, the administrative judge applies 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 this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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. 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 or 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. 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 relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

From 1986 to the present, Applicant accumulated multitudinous delinquent debts that he removed from his credit record and did not have to pay after discharge in three bankruptcy actions. The first bankruptcy was filed under Chapter 13 of the U.S. Bankruptcy Code but Applicant does not disclose the amount of debt he repaid in that action. The following two bankruptcies were Chapter 7 actions, resulting in the wiping out of his debts. The most recent Chapter 7 bankruptcy took care of two delinquent debts totaling \$64,881. Applicant retains \$394,678 of mortgage debt on two houses he owns. The actions of Applicant regarding his delinquent debts since 1986 show a pattern of incurring financial obligations that he does not repay. He clearly demonstrates an inability or unwillingness to repay debts and has a long history of not meeting his financial obligations. These two disqualifying conditions apply.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only one mitigating condition might have partial applicability.

- (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 (b) would apply if the loss of employment were shown by Applicant to have a substantial effect on his ability to repay his debts. In the past five years, Applicant has been unemployed three months. He failed to meet his burden of proof on that issue.

Lastly, Applicant contends his wife's medical problems in an unspecified time caused an inability to repay his delinquent debts. Applicant did not provide any documents to support his assertion. His pattern of bankruptcies shows he cannot manage his money properly. He has not acted responsibly under the financial circumstances he encountered since 1986. Furthermore, Applicant failed to prove AG ¶ 20 (b) applied because he did not submit sufficient evidence of the conditions that he asserted were beyond his control, and that he acted responsibly in resolving his delinquent debts during the time the debts were accumulating.

Applicant continues to the present time to have difficulty managing his money and paying his debts. There is a pattern of financial mismanagement over the time of more than 27 years that shows poor self-control and lack of judgment. Therefore, AG ¶ 20 (a) does not apply.

Applicant may have received financial counseling as part of his most recent bankruptcy petition, but he did not submit any proof that he completed such a course. Even if he had, it is clear from the totality of the evidence that Applicant's financial problems are not under control. With his record of money management, and now having two houses on which he has \$394,678 of debt, the problem is clearly not under control. AG ¶ 20 (c) is not applicable.

Applicant did not initiate a good-faith effort to repay his creditors. He claims he paid \$20,000 over two years to a debt management company that took his money but did not pay his creditors. Applicant does not provide any documents, such as the agreement with the company, proof of such payments, or a list of creditors to be paid, so his assertion is given no credence. AG ¶ 20 (d) does not apply.

Applicant did not dispute any debts, so AG ¶ 20 (e) does not apply. Nor does AG ¶ 20(f) pertain because there is no evidence of any affluence resulting from any source, legal or otherwise.

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):

(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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken any action to resolve his delinquent debts by payment, except in a 1986 Chapter 13 bankruptcy action. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His pattern of incurring debt and not repaying it over the past 27 years will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the whole-person concept against Applicant because he is a financially irresponsible person, causing serious doubts about his trustworthiness, reliability, and good judgment.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Subparagraph 1.b:	Withdrawn
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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

PHILIP S. HOWE
Administrative Judge