



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-03594

Appearances

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

11/26/2014

Decision

HOWE, Philip S., Administrative Judge:

On January 3, 2012, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On December 3, 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 answered the SOR in writing on December 20, 2013. Applicant admitted four allegations and denied two of them. He tendered a separate letter of

explanation of his debts blaming his former wife. Applicant stated in a third document his request that the case be decided on the written record in lieu of a hearing.

On January 24, 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 11, 2014. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on September 2, 2014, and stated he intended to respond to it. The file does not contain an explanation of why it took seven months for Applicant to receive the FORM. However, Applicant did not file a Response to the FORM within the 30-day time allowed that would have expired on October 2, 2014. I received the case assignment on November 3, 2014. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant denied the allegations in Subparagraphs 1.a and 1.b, and admitted the four remaining allegations. (Items 2-6)

Applicant is 58 years old, divorced, and has two adult children. He has worked for a defense contractor since 1979. Applicant's financial statements show he has a weekly income of about \$2,000. (Items 4-10)

Applicant's SOR shows six delinquent debts. Two debts are duplicates and the Department Counsel withdrew the allegation in Subparagraph 1.d. because of that duplication. Applicant therefore owes five delinquent debts totaling \$23,592. He has not repaid any of these debts. He contests several debts on the basis they were his former wife's financial obligations and he has no duty to pay them, even though they are shown on the credit reports as joint accounts. His former wife filed Chapter 7 bankruptcy and Applicant asserts in "seven years he will be free," presumably meaning his obligation to pay these five debts. (Items 4-10, Answer)

The delinquent debt listed in Subparagraph 1.a for \$5,256 is for a gas bill on his marital home. He contends his estranged wife moved back into the home with one of their children. They allegedly arranged gas service, though Applicant's documents claim it was an electric bill. He contends they did not pay the bill and he is not duty bound to pay it. The debt is owed from May 2011. The house is jointly owned. Applicant has not paid this debt. It is unresolved. (Items 1-10)

Applicant owes \$288 on a cable television debt since July 2010 (Subparagraph 1.b). This debt has been delinquent since July 2010. Applicant did not submit any

documents showing any payments made on this debt. This debt is unresolved. (Items 4-10)

Applicant admits owing \$7,457 to a bank for a line of credit (Subparagraph 1.c). This debt has been delinquent since March 2008. Applicant did not submit any documents showing that this debt is paid. It is unresolved. (Items 4-10)

Applicant owes \$6,932 to a bank since November 2010 (Subparagraph 1.e). Applicant contends this debt results from his former wife's business. He cosigned for the loan and it is joint account. Applicant claims he only owes half of this debt, but did not submit any documents showing any payments on any part of the debt by him. This debt is unresolved. (Items 4-10)

Applicant's final debt owed is for \$3,659 to a collection agency for a loan incurred for his former wife's business (Subparagraph 1.f). Again, Applicant claims he owes only half of the amount shown on this joint account. He did not submit any documents to demonstrate he made any payments on any part of the debt. This debt is unresolved. (Items 4-10)

Applicant's August 7, 2013 answers to the DOHA interrogatories show that Applicant admitted the debts and that he had not taken any action to resolve them. (Item 6)

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 2008 to the present, Applicant accumulated five delinquent debts which remain unpaid or unresolved. Those debts total \$23,592.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. None of the mitigating conditions apply.

(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;

(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;

(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;

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

(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; and

(f) the affluence resulted from a legal source of income.

These debts have been delinquent for several years, were not infrequent, or occurred under unusual circumstances. AG ¶ 20(a) does not apply.

AG ¶ 20(b) does not apply. Applicant has been employed continuously since 1979. He failed to meet his burden of proof on that issue.

Applicant has not sought or received any financial or budgetary counseling. AG ¶ 20(c) does not apply.

Applicant has not made any effort to repay any of these five debts. AG ¶ 20(d) does not apply.

Applicant does not have a reasonable basis to contest any of these debts. He admits three of them and denies two debts. But he is the joint owner on all of the debts. Therefore, he is obligated to pay them. Also, he did not submit any documents to show any efforts to contest the debts. AG ¶ 20(e) does not apply.

There is no affluence at issue in Applicant's financial situation. Therefore, AG ¶ 20(f) 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 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. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past six years.

Overall, the record evidence leaves me with questions and 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.

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
Subparagraphs 1.a to 1.c:	Against Applicant
Subparagraph 1.d:	Withdrawn as a duplicate of 1.c
Subparagraphs 1.e and 1.f:	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

