



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 12-03826
)	
)	
Applicant for Security Clearance)	

Appearances

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

01/15/2015

Decision

HOGAN, Erin C., Administrative Judge:

On April 2, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing the 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 Department of Defense for SORs issued after September 1, 2006.

On July 14, 2014, Applicant answered the SOR and requested that his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on October 6, 2014. The FORM was forwarded to Applicant on October 9, 2014. Applicant received the FORM on October 24, 2014. He had 30 days to submit a response to the FORM. He did not submit additional information. On December 8, 2014, the FORM was forwarded to the hearing office and was assigned to me on December 9, 2014.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admits SOR allegations 1.c and 1.e, and denies SOR allegations 1.a, 1.b and 1.d. (Item 4)

Applicant is a 49-year-old male employed by a Department of Defense contractor seeking to obtain a security clearance. He has been employed with the company since February 1988. He is married and has two sons, ages 22 and 19. (Item 5)

Applicant completed a security clearance questionnaire on January 21, 2011. (Item 4) A background investigation was initiated. His background investigation revealed five delinquent accounts, a total approximate balance of \$138,334. The delinquent accounts include a \$106 unpaid judgment filed against Applicant by a homeowner's association in September 2009 (SOR ¶ 1.a: Item 6 at 24; Item 7 at 1; Item 8 at 1; Item 10 at 3); a \$3,112 credit card account charged off in May 2011 (SOR ¶ 1.b: Item 8 at 1; Item 9 at 1; Item 10 at 8); a \$118,348 second mortgage charged off in April 2011 (SOR ¶ 1.c: Item 6 at 25; Item 8 at 1; Item 9 at 2; Item 10 at 10); a \$1,564 credit card account charged off in May 2011 (SOR ¶ 1.d: Item 6 at 24-25; Item 9 at 1; Item 10 at 10); and a \$15,204 loan account charged off in August 2011 (SOR ¶ 1.e: Item 6 at 24; Item 8 at 1; Item 9 at 1).

Applicant admits the debts alleged in SOR ¶¶ 1.c (the second mortgage) and 1.e (\$15,204 loan). He denies the debts alleged in SOR ¶¶ 1.a, 1.b and 1.d. Applicant claims these debts are settled and paid. (Item 4) His financial problems were caused by his wife being the victim of a check scam incident in 2008 and his employer's cancellation of overtime hours in 2009, which he relied on for income. His wife was also briefly hospitalized in August 2010. Currently, Applicant has adjusted to working without overtime. He lives paycheck to paycheck, but is able to meet his financial obligations. He has not attended financial counseling. (Item 6 at 25-26)

As of October 23, 2013, Applicant's net monthly salary was approximately \$4,647.76. His wife's net monthly salary in October 2013 was approximately \$1022.00. Their combined net monthly income was \$5,669.76. Applicant's monthly expenses were \$1,407.36. His monthly debt payments were \$2,703.52. Total monthly payments were approximately \$4,110. After expenses, applicant had approximately \$1,559 left over in discretionary spending. (Item 6 at 5-9). Neither the Government nor the Applicant presented an update of Applicant's current financial status.

The current status of the delinquent debts are:

SOR ¶ 1.a: \$106 homeowner's association judgment entered against Applicant in September 2009: Applicant has maintained throughout the investigation that he paid this debt. While he did not provide a receipt for this debt in response to the SOR or the

FORM, the summary of his interview with an investigator conducting his background investigation on February 15, 2011, states:

The Subject received a letter on 1/28/11 in reference to this judgement. This is the subject's home owner (sic) association fees that were past due. The subject (sic) spouse went into the home owner association and paid this judgment 2/11/11. Subject had a receipt to show that he paid it in full... (Item 6 at 24)

The investigator conducting Applicant's background investigation acknowledged Applicant presented a receipt which indicated he paid this judgment in full. SOR ¶ 1.a is found for Applicant.

SOR ¶ 1.b: \$3,112 charged-off credit card account: In his response to the SOR, Applicant states that he settled and paid off this account, but did not provide documentation proving this assertion such as a receipt, or statement from the company the debt was paid in full. Debt unresolved.

SOR ¶ 1.c: \$118,000 charged-off second mortgage account: Applicant admits this debt, but provided no information on the current status of the debt. During his background investigation interview on February 15, 2011, Applicant told the investigator that he was attempting to modify the loan in order to put the late payments towards the end of the loan. (Item 6 at 25) In response to interrogatories dated October 24, 2013, Applicant indicated, "company offered to settlement, have not communicated recently. (charged off)." (Item 6 at 4) Applicant provided no additional information on the status of this debt when he answered the SOR on July 14, 2014, and did not submit a response to the FORM. Debt unresolved.

SOR ¶ 1.d: \$1,564 charged-off home supply store account: Applicant denies this debt. He claims that he settled and paid the account. The most recent credit report in the file is dated November 12, 2013. This account is still listed on the credit report. (Item 8 at 1). While the credit report is over a year old, a prima facie case was established that Applicant owed this debt. As such, the burden shifted to Applicant to provide evidence to mitigate this debt. He did not provide additional documents to corroborate his assertions that the debt was settled and paid such as receipts of payment, a statement from the creditor verifying the debt was paid in full, or a recent credit report indicating the account was paid. Debt unresolved.

SOR ¶ 1.e: \$15,204 charged-off loan: Applicant admits this debt. He is the co-signer on a loan his wife obtained in order to pay credit cards and medical bills. During his background investigation interview, Applicant claimed that he set up a payment plan with the company to pay \$200 a month to resolve this debt. (Item 6 at 24). In his response to the SOR, he admits the debt, but did not provide additional information about whether he continued making the \$200 monthly payments on this account as agreed to in his payment plan. (Item 4 at 2) Debt unresolved.

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 must be considered when 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining 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. Such decisions entail a certain degree of legally permissible extrapolation as to 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." 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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant's case. Applicant incurred numerous delinquent debts that he has been unable or unwilling to pay over the past five years.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several mitigating conditions potentially apply to Applicant's 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) does not apply. Although Applicant maintains that he resolved three of the debts alleged in the SOR, he provided no verification that the debts were resolved aside from the debt alleged in SOR ¶ 1.a. All remaining delinquent accounts are unresolved. Applicant's unresolved debt indicates irresponsible behavior and continues to cast doubt on his reliability, trustworthiness, and 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) partially applies because Applicant had a period of adjustment when his company stopped allowing overtime hours. His wife was also a victim of a check scam and had a medical procedure in August 2010. However, Applicant has been consistently employed. If the numbers he provided were accurate, he has \$1,500 in discretionary income each month after expenses. He appears to have had the ability to enter into repayment agreements. Applicant encountered circumstances beyond his control which caused some financial problems. However, I cannot conclude that he 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) does not apply. There is no evidence Applicant received financial counseling. He has not provided evidence that his delinquent debts are being resolved.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. While Applicant maintains he settled three debts, there is sufficient proof to conclude that only the debt alleged in SOR ¶ 1.a was resolved. Applicant failed to provide sufficient evidence that he is making a good-faith effort to resolve the delinquent accounts alleged in SOR ¶¶ 1.b – 1.e.

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 the 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 the facts and circumstances surrounding this case. I considered Applicant's employment history with a defense contractor since 1988. I considered there were circumstances beyond his control which contributed to Applicant's financial problems. However, Applicant had several years to deal with his financial problems and has not provided sufficient evidence that he took active steps to resolve them.

The concern under financial considerations is not only about individuals who are prone to engage in illegal acts to generate funds. Another concern is that failure 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 which raises questions about an individual's reliability, trustworthiness, and ability to protect classified information. In other words, if an individual has trouble managing their finances, this can raise doubts about an individual's ability to handle and protect classified information. Applicant's history of financial problems raises doubts about his

ability to handle and protect classified information. Mindful of my duty to resolve cases where there is doubt in favor of national security, I find Applicant failed to mitigate the concerns raised under financial considerations.

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:	For Applicant
Subparagraphs 1.b – 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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge