



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



In the matter of:)	
)	
)	
)	ISCR Case No. 12-04271
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

03/19/2014

Decision

LYNCH, Noreen, A., Administrative Judge:

On October 23, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging 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 a hearing before an administrative judge. The case was assigned to me on February 20, 2014. A notice of hearing was issued on February 21, 2014, scheduling the hearing for March 7, 2014. Government Exhibits (GX) 1-4 were admitted into evidence, without objection. Applicant testified and submitted Applicant Exhibits (AX) A-G, which were admitted without objection. The transcript (Tr.) was received on March 13, 2014. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the majority of the factual allegations under Guideline F (Financial Considerations), with explanations. He denied SOR allegations ¶ 1.e and ¶ 1.g.

Applicant is a 44-year-old defense contractor. Applicant graduated from high school in 1989 and attended trade school, receiving a certification in August 2000. He has been with his current employer since 2011. (GX 1) This is his first request for a security clearance.

Applicant married in 1990. He and his wife have no children. Applicant's wife left him in approximately May 1999. They are not legally divorced, but they have no contact with each other. She left Applicant with all of the marital debt. He filed for bankruptcy in 1999. (Tr. 59) Applicant does not deny that he is in debt. He states that over the last two years, he has worked to repay some of his debt. (Tr. 13) He provided documentation that several accounts had been paid in 2013. (GX 2, AX D) These debts were not listed on the SOR. In 2014, Applicant also paid his car note and provided documentation to support the claim. (AX C)

Applicant explained that he left his employer in 2006 or 2007 to start his own business. (Tr. 33) The home construction business began to fail when the economy faltered. His business involved custom carpentry, and by June 2009, he had no customers. (Tr.33) The years before the start of his new business venture, Applicant earned about \$50,000 to \$60,000 a year. Since he was self-employed, he did not collect any unemployment when his business failed leaving him with no income. From 2007 until 2009, he had some temporary work. Applicant made approximately \$18 an hour.

The SOR alleges seven delinquent debts, including medical accounts, a judgment, a mortgage debt, and past-due accounts totaling approximately \$91,005. The credit reports confirm the debts. (GX 3, 4)

The 2009 judgment alleged in SOR 1.a for \$972 is not paid. Applicant admitted that he has not resolved the debt because he claims the surgery did not work. (Tr. 23) He has not been in touch with the creditor.

The medical account in the amount of \$1,431 alleged in SOR 1.b has not been paid. Applicant presented documentation concerning the account that still has the full balance. (AX A). He explained that he telephoned the creditor, but he was put on hold and he could not continue to spend the time. (Tr.14)

The charged-off account alleged in SOR 1.c for approximately \$16,450 remains unpaid. This amount is for a second mortgage loan. He does not remember when he purchased the home, but he believes it was 2005. He had a down payment, but this account is the result of a refinanced second mortgage. (Tr. 30) Applicant stopped paying in 2009, as he did not have consistent work. (Tr. 32)

The past-due mortgage account alleged in SOR 1.d for approximately \$69,876 remains unpaid. Applicant has not made any payment since 2009. He moved from the home in July 2011. He is not sure about the foreclosure proceedings. (Tr. 42) Applicant attempted a loan modification at some point, but he does not recall details. He has not contacted the loan company.

A collection account alleged in SOR 1.e for approximately \$1,000 is unresolved. Applicant does not know the origin of the debt. He thinks that it might be a medical account. The account has been credited with a payment of \$250. It does not list a balance. (AX G) Applicant believed the account was paid, but a credit report in the record does not confirm the account is the same account that is listed on the SOR. (Tr. 51)

The medical account alleged in SOR 1.f for \$1,252 remains unpaid. This is also a medical account that Applicant does not recognize. He has not contacted the creditor.

The collection account alleged in SOR 1.g for \$74 is not paid. Applicant disputes this debt. He believes he completed a dispute form on line. (Tr. 52) He thinks that he disputed the amount with Equifax. (Tr. 53)

Since 2011, Applicant has earned about \$22 an hour. However, the number of hours that he works each day is not the same. If he has an offshore job, he earns time and a half. Applicant recalls that in 2012, he spent 89 hours off shore, In 2013, it may have been up to 30 days. (Tr. 39)

Applicant projects that his monthly net salary is \$3,505. After expenses, he has a monthly net remainder of about \$742. Applicant has a checking and a savings account. He acknowledged that he does not have a savings plan. He plans to use any money that he makes offshore to pay some delinquent debts. He was candid in that he does not know when or for how long the next offshore assignment may be. (Tr. 59)

Applicant presented two letters of reference from his employer. (AX E, F) He is described as a key team member of the offshore operations team. He has shown a strong sense of loyalty, ethics, and leadership. Applicant consistently volunteers for overtime and travel. He is dependable. Applicant never had a violation of any kind.

A colleague, who has known Applicant for more than twenty years, believes him to be trustworthy and honest. He is aware of Applicant's financial hardships. Applicant is described as a hard worker who is committed to maintaining his employment.

Applicant could not recall details about many of the debts. He was sincere, but vague concerning his attempts to contact some creditors. He acknowledged that he tried to call certain creditors by phone, but he was put on hold. Applicant did not follow up with any written correspondence. (Tr. 28) He also believed he had made some monthly payments on medical accounts at some point, but he could not be certain. (Tr. 27) He now seeks financial help with budgeting from a friend. (Tr. 62)

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

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." ⁴ "The clearly consistent standard indicates that security clearance

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ 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

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

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

Applicant acknowledges that he has delinquent debts. He also filed for bankruptcy in 1999. His credit reports confirm the debts. Consequently, the evidence is sufficient to raise the disqualifying conditions in ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

- (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;

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

⁶ *Id.*

(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; and

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

Applicant's financial problems began when his wife left the marriage and he inherited the marital debt. He filed for bankruptcy in 1999, which is an acceptable method of resolving debt. However, since that time, Applicant has incurred delinquent debt in the amount of \$91,055. He left his employment to start his own business. Unfortunately, the business failed in 2009. Applicant was not able to find steady full-time employment and could not pay his home mortgage loan and medical bills. His business failure and unemployment exacerbated his financial situation. However, Applicant has not acted responsibly. In 2013, he paid several non-SOR debts. He has not resolved or made a concrete plan to pay the debts that began in 2009. He disputed two SOR debts, but did not provide documentation. In sum, Applicant has not made good-faith efforts to contact his creditors to resolve and address the financial issues. Applicant has not received formal financial counseling. He intends to pay his bills by using money he saves from working offshore. However, he does not know when that might occur. He has not actively contacted his creditors. AG ¶¶ 20 (b) and (d) are relevant in part. However, Applicant did not meet his burden to mitigate the financial considerations concern.

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 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 a 44-year-old defense contract employee. He is skilled in his work and is recommended by his employer. He was ambitious and started his own business. However, the business failed due in part to the faltering economy. He tried to find work and did not receive unemployment benefits. He also inherited marital debt and was forced to file for bankruptcy in 1999.

Applicant has paid several debts that are not alleged in the SOR. He produced documentation that proves his assertion. Applicant incurred the delinquent debt as a result of his business failure. He has been gainfully employed since 2011, but he has not made payment arrangements for the bulk of his debt. He has not contacted his creditors. He has not followed through on his delinquent mortgage accounts. He has not met his burden to mitigate the financial considerations security concerns.

Applicant was candid at the hearing. He wants to pay his debts, but is not actively doing so. He has not acted reasonably under the circumstances. I have doubts and reservations about Applicant's current reliability. Any doubts must be resolved in favor of the government. 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
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	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