



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



In the matter of:)
)
) ISCR Case No. 12-03423
)
Applicant for Security Clearance)

Appearances

For Government: Carroll Connelley, Esq., Department Counsel
For Applicant: *Pro se*

03/07/2017

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concern. Clearance is denied.

Statement of the Case

On December 5, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing 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) implemented by the DOD on September 1, 2006.

On January 13, 2015, Applicant answered the SOR, admitting the allegations and requesting a hearing before an administrative judge from the Department of Defense Office of Hearings and Appeals (DOHA). The case was initially assigned to

another administrative judge on April 11, 2016 who scheduled a hearing for June 2, 2016. On May 26, 2016, the case was continued, and then assigned to me on October 19, 2016. DOHA issued a notice of hearing on November 8, 2016, scheduling the hearing for December 7, 2016. The hearing was held as rescheduled. At the hearing, I received five Government exhibits (GE 1 - GE 5), and considered Applicant's testimony. DOHA received the transcript (Tr.) on December 15, 2016.

Findings of Fact

Applicant is a 52-year-old married man with an adult child from a previous marriage. He is a veteran of the Navy, serving from 1982 through his honorable discharge in 1991. He graduated from college in 2015, earning a bachelor's degree in information technology. He is currently working toward a master's degree. Since October 2016, he has been working for a defense contractor. (Tr. 12)

Between 2007 and 2012, Applicant incurred approximately \$62,000 of delinquent debt. Approximately \$36,000 of this debt constitutes unpaid federal and state income taxes that he incurred over multiple years (subparagraphs 1.a and 1.b). Approximately \$8,500 constitutes delinquent medical debt (subparagraphs 1.c - 1.v). Approximately \$17,000 constitutes a delinquent auto loan for a car that Applicant voluntarily surrendered (subparagraph 1.x), and the remainder is delinquent credit card accounts (subparagraphs 1.w and 1.y). Applicant attributes his financial problems to bouts of unemployment and unsteady employment, together with a history of medical problems. (Answer at 2-3)

The tax lien totaling \$6,187, as alleged in subparagraph 1.a, is owed to Applicant's state taxing authority. He contends that he has reduced this delinquency by approximately \$1,000 through automatic withdrawals from paychecks from his previous job. (Tr. 14) He provided no supporting evidence for this assertion. He is not currently making any payments.

SOR subparagraph 1.b is a federal tax lien totaling \$29,924. Applicant contends that he has reduced this debt by \$18,000 through annual tax refund offsets. (Tr. 22) He provided no documentary evidence.

As for the remainder of the debts, Applicant met with a representative of a debt consolidation company and developed a plan, but was unable to afford the required monthly payments. (Tr. 16) Now that his court-ordered child support has ended, he plans to apply \$400 a month toward his debts.

Applicants' current plan is to apply \$400 per month, constituting the money previously earmarked for his adult daughter's child support for which he is no longer responsible, to his delinquencies. He has not yet begun making payments.

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are flexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ two(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.”

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.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Applicant’s history of delinquent debt triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 contends that his financial problems were caused by unsteady employment and unemployment, and that his financial problems were exacerbated by serious health problems. Although these problems constitute circumstances beyond his control, he provided minimal evidence that he addressed these problems responsibly. AG ¶ 20(b) is only partially applicable.

Applicant acknowledges that he has not made any payments towards the resolution of his commercial debts or his medical bills, and his contention that he has reduced his tax delinquencies, either through refund offsets or wage garnishments, are unsubstantiated. None of the remaining mitigating conditions applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Applicant's longstanding and extensive financial delinquencies, particularly his income tax debts, generate unresolved doubt as to whether it is clearly consistent with the national interest to grant him a security clearance.

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:

**A G A I N S T
APPLICANT**

Subparagraphs 1.a - 1.y:

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.

MARC E. CURRY
Administrative Judge