



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



In the matter of:

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) ISCR Case No. 12-08765
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Applicant for Security Clearance

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

09/19/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On December 19, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 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 review based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated January 25, 2016.¹ Applicant received the FORM on February 11, 2016. Applicant did not respond to the FORM. The case was assigned to me on September 2, 2016. Based on a review of the case file, eligibility for access to classified information is denied.

¹The Government submitted eight items for the record.

Findings of Fact

In his answer to the SOR, Applicant denied the SOR allegations (1.a through 1.k), and stated that the listed debts are not recent. (Item 2)

Applicant is 58 years old. He graduated from high school in 1976 and served in the Air Force reserve from 1976 to 1981, leaving with an honorable discharge. He is married and has one child. He attended college but did not obtain a degree. He has been employed with his current employer since 1983. (Item 3) Since 1983, Applicant has held a security clearance. He completed an application for a security clearance on March 28, 2012. (Item 3)

Financial

The SOR alleges 11 delinquent debts totaling approximately \$76,628, including a mortgage foreclosure; state tax liens from 2007 to 2010; and various collection accounts. (Item 8) In his answer to the SOR, Applicant stated that "he has battled identity theft since 2000," but provided no details regarding the identity theft. He also noted that the debts were "outdated."

As to SOR allegation 1.a, the past-due mortgage account in the amount of \$59,670, Applicant disclosed on his 2012 security clearance application that he could not afford the monthly payment. The home was foreclosed in 2008 and he stated that the debt was cancelled in 2009. (Items 3, 4, and 5) The 2016 credit bureau report confirms that the balance on the account is zero.

As to SOR allegation 1.b, a charged-off account in the amount of \$199, Applicant stated that the account was paid in full, but he did not provide any documentation to support his claim.

As to SOR allegations 1.c, 1.d, 1.e. and 1.f for state tax liens from 2007 to 2010, Applicant stated in 2014 interrogatories that he paid the tax, but he had no documentary evidence to confirm this claim. In his 2012 investigative interview, he stated that he never had any tax liens against him. (Item 4) The 2016 credit bureau report does not list any tax liens but the earlier credit report does reflect tax liens. (Item 8)

As to SOR allegations 1.g through 1.k, for collection accounts, Applicant stated that he knew nothing about these accounts and later that he had paid them, but provided no documentary evidence to support payments. He noted that papers may have been lost when he moved from one state to another.

Applicant did not respond to the FORM and there is no information in the record concerning unusual circumstances for any debts or whether he had obtained any financial counseling. He did not provide details on possible identity theft. He did provide a personal financial statement that shows a net monthly remainder of \$3,169.

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.

The U.S. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

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." ⁵ "The clearly consistent standard indicates that security clearance

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ 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.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ 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

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The Government produced credible evidence that Applicant incurred delinquent debts and state tax liens. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant’s financial difficulty make it difficult to conclude that it occurred “so long ago.” Applicant’s debts remain unpaid with the exception of the past-due mortgage account. He noted in his 2012 interview that he would research the accounts that he did not recognize. He did not provide any information that the accounts are resolved. Consequently, Financial Considerations Mitigating Condition (FC MC) 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.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant provided no reasons that would qualify him for this mitigating condition. He has been gainfully

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

employed. I cannot find that he acted responsibly in the absence of any supporting documentation.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. There is no information in the record that he has addressed any delinquent debts other than the past-due mortgage account that was cancelled. There is no information to show that he has obtained recent financial counseling. FC MC 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.

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 58-year-old employee who has been employed with his employer since 1983 and has held a security clearance since 1983. He served in the U.S. Air Force reserve for over four years. He is married and has one child. However, he provided insufficient information to supplement the record to mitigate his case.

Applicant provided no explanation for the delinquent debts other than possible identity theft, and that they are "outdated." He denies owing any currently delinquent debts. He has not provided mitigation for the financial considerations security concerns.

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:	For Applicant
Subparagraphs 1.b-1.k:	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