



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-11299

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel

For Applicant: *Pro se*

08/16/2016

Decision

HOWE, Philip S., Administrative Judge:

On June 15, 2012, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On April 18, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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 acknowledged receipt of the SOR on April 18, 2015. He answered the SOR in writing on May 11, 2015, and requested a hearing. Department Counsel was prepared to proceed on August 7, 2015. The case was assigned to a different administrative judge on August 17, 2015. The Defense Office of Hearings and Appeals

(DOHA) issued the first Notice of Hearing on September 8, 2015, for a hearing scheduled for September 24, 2015. Applicant did not appear at that hearing and did not give notice of his absence. A brief transcript of that proceeding was made and received by DOHA.

On September 29, 2015, Applicant sent an email to the Department Counsel and the previously detailed judge explaining why he did not appear as scheduled. He claimed he was ill and also missed work that day. On October 2, 2015, an order was issued continuing the hearing to another date.

The case was transferred to me on November 10, 2015. DOHA issued a second Notice of Hearing on November 18, 2015, and I convened the hearing as scheduled on December 10, 2015. The Government offered Exhibits 1 through 7, which were received without objection. Applicant testified and submitted Exhibits A through C, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 17, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Subparagraphs 1.a, 1.b, and 1.h through 1.l of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.c to 1.g of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 50 years old. He works for a defense contractor. He has been married and divorced three times, and remarried and divorced his third wife a second time. He has four children, the oldest being adults and his youngest an 11-year-old who lives with him. Applicant must send her to visit her mother in another state at least monthly and he claims the costs of those flights consumes some of his monthly income. He is accumulating money in his checking account to pay for a lawyer to seek modifications of his custody agreements for his daughter. He is also accumulating money with which to pay for a bankruptcy filing in 2016. (Tr. 12-16, 29, 37; Exhibits 1, 2, 6, 7)

The SOR lists 12 delinquent debts owed to credit card companies, cell telephone companies, and a former landlord. These debts total \$55,632. Applicant has not resolved any of them. He admits the eight large credit card debts and denies the four smaller debts. Applicant has not done anything to resolve the debts in at least six years. He testified that in 2008 he turned over some of the debts to a debt resolution company and paid it \$600 to start the process of getting his debts resolved. He has not heard anything from that company since 2010, when he discovered the phone number he had for it was disconnected. (Tr. 19-28, 33, 35, 36; Exhibits 3-7)

Applicant's three exhibits pertain to a debt that is not listed on the SOR. It is a debt owed to a bank. The exhibits refer to a settlement offer in 2008. The payment

status of that debt is unknown because there is no evidence Applicant paid money according to the settlement installment payment arrangement. (Tr. 30; Exhibits A-C)

There is no evidence Applicant had any financial counseling designed to resolve his delinquent debts. His only action was to retain that debt resolution company that did not resolve his debts. (Tr. 19-35; Exhibits 1-7)

Applicant answered Section 26 on the e-QIP in the negative as regards debts turned over to a collection agency in the previous seven years, which would have taken his relevant debt period back to 2005. Applicant claims he pushed everything out of his head in 2012 regarding his debts because he turned them over to the debt resolution company and was making payments. He also had other concerns relating to his divorces and children. He stated, "I just really didn't think about it." Applicant only resolved one debt through the debt resolution company, that which is the subject of his exhibits and not listed in the SOR. (Tr. 33, 34; Exhibits 1-7)

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, these guidelines are applied in conjunction with the factors listed in the adjudicative process (AG ¶ 2(a)). 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under 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.

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 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. 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.

Applicant accumulated \$55,632 in delinquent debt from 2008 to the present time that remains unpaid. Applicant has 12 delinquent debts listed in the SOR. The evidence raises all of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. As more fully herein, none of the following mitigating conditions are applicable:

(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.

Applicant's debt delinquencies continue to the present day. There are no unusual circumstances and they continue to recur because they are unpaid. AG ¶ 20 (a) is not established.

The delinquent debts were not beyond Applicant's control. He entered into the debts voluntarily. He has not acted responsibly under the circumstances. AG ¶ 20 (b) is not established.

Applicant is not paying his debts in an orderly manner currently. He has not had any financial counseling. He retained a debt resolution company in 2008 to resolve his debts but it took action on one debt. Applicant has not had contact with that company since 2010. The financial problem of the unresolved debts is not under control. AG ¶ 20 (c) is not established.

Applicant has not repaid the 12 debts listed in the SOR. AG ¶ 20 (d) is not established because Applicant has not made a good-faith effort to repay the delinquent SOR debts.

Applicant has not shown a reasonable basis to dispute any or all of the three delinquent debts. AG ¶ 20 (e) is not established.

Applicant has no affluence that comes from a legal source and it is not an issue in his proceeding. AG ¶ 20 (f) is not established.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes seven conditions that could raise a security concern and may be disqualifying. One condition applies:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admits he did not disclose his 12 debts on his e-QIP nor did he disclose and discuss them with the government investigator until confronted with them at the interview after he completed the e-QIP. He deliberately did not disclose his delinquent debts on his e-QIP or to the government investigator. He testified he put them out of his mind because of other things and his having turned them over to the debt resolution company. Neither explanation is credible or persuasive. AG ¶ 16 (a) is established.

AG ¶ 17 provides seven conditions that could mitigate security concerns. None of them apply:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant deliberately did not disclose his debts on the e-QIP in 2012. AG ¶ 17 (a) is not established.

No person gave Applicant improper or inadequate advice concerning the security clearance process. AG ¶ 17 (b) is not established.

The debts are not minor. The failure to disclose them on the e-QIP shows his behavior is not infrequent. There are no unique circumstances involved. Applicant knew of the debts when he completed the e-QIP. AG ¶ 17 (c) is not established.

Applicant has not obtained counseling to change his behavior, including paying the debts. AG ¶ 17 (d) is not established.

Applicant has not taken any steps to reduce or eliminate any vulnerability because of the unpaid debts and his failure to disclose them when requested by the U.S. government on the e-QIP. AG ¶ 17 (e) is not established.

The information about Applicant's delinquent debts is reliable and shown on three credit reports introduced as exhibits. AG ¶ 17 (f) is not established.

Finally, there is no allegation of association with persons involved in criminal activity, so AG ¶ 17 (g) is not applicable.

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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant voluntarily incurred the debt that is now delinquent and has been for at least six years. He has done nothing to resolve the debts, even though he admits eight of the twelve debts. The remaining four debts appear on his credit reports and are his to pay. He shows a pattern of disregard for his duty to repay the borrowed money represented by the delinquent debts. There is no rehabilitation or permanent behavioral changes. The SOR debts total \$55,935, which is a lot of money to owe and not repay to the creditors. Applicant admitted he ignored the debts for the past six years after he could not reestablish contact with the debt resolution company.

Overall, the record evidence leaves me with questions or 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 from his financial considerations and personal conduct.

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.i:	Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraph 2.a:

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