



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



In the matter of:

ISCR Case No. 14-05474

Applicant for Security Clearance

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

11/17/2016

Decision

CREAN, Thomas M., Administrative Judge:

Applicant failed to provide sufficient documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On October 13, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 4) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on January 2, 2014. (Item 5) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On May 9, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in DOD on September 1, 2006.

Applicant answered the SOR on August 17, 2015. He admitted the seven allegations of delinquent debts (SOR 1.a to SOR 1.g), and the one allegation of failing to file his federal tax return for tax years 2008 (SOR 1.h). In his answer, Applicant claims that SOR 1.b and 1.c are the same debt, and that he will submit his 2008 federal tax return by August 12, 2015. He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on February 25, 2016. Applicant received a complete file of relevant material (FORM) on March 4, 2016, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely filed a response to the FORM. (Item 9) I was assigned the case on September 27, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM agent (Item 5) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the summary. In his response to the FORM, Applicant did not object to consideration of the PSI. Any objection to the information is waived. I will consider information in the PSI in my decision.

Findings of Fact

After a thorough review of the case file, I make the following findings of fact. Applicant is 34 years old. He graduated from high school in 2000. He served on active duty in the Navy from August 2000 until January 2005 when he was honorably discharged as a petty officer third class (E-4). He was granted eligibility for access to classified information while serving on active duty. He married in September 2001 and divorced in March 2008. He has one child that he is supporting with child support.

After leaving active duty in January 2005, Applicant worked various jobs as a welder and boilermaker while a member of a trade union. He had short periods of unemployment between jobs while waiting a new assignment. He also worked as a cook, warehouseman, and store assistant. He received unemployment compensation while unemployed and while waiting job assignments. He was unemployed from January 2008 until September 2008, from October 2008 until January 2009, from September 2009 until November 2010, and from May 2011 until January 2013. He started working in maintenance for his current employer in October 2013. His current

employer is sponsoring him for a security clearance. (Item 4, e-QIP, dated October 31, 2013; Item 5, PSI, dated January 2, 2014)

The SOR alleges, and credit reports (Item 6, dated April 20, 2015; Item 7, dated July 25, 2014; and Item 8, dated December 17, 2013) confirm the following delinquent debts for Applicant; a charged-off account to a credit union for \$2,993 (SOR 1.a); a telecommunication debt in collection for \$750 (SOR 1.b); the same telecommunication debt in collection for \$750 (SOR 1.c); a television service debt in collection for \$227 (SOR 1.d); another credit union debt in collection for \$8,777 (SOR 1.e); a department store debt charged off for \$275 (SOR 1.f); and an insurance debt charged off for \$275 (SOR 1.g). Also listed is a failure to file a federal tax return for 2008. (SOR 1.h) The approximate amount of delinquent debt alleged is \$13,876. Applicant attributes his delinquent debts to lack of sufficient income because of long periods of unemployment.

Applicant listed in response to financial question 26 on his e-QIP (Item 4) only his failure to file his 2008 federal tax return, and that he was delinquent on his child support payments. Applicant told the security investigator that his financial situation was better since he settled the amount of his child support payments in January 2014. Applicant admitted the credit union credit card debt at SOR 1.a to the security investigator. The credit card was opened in 2008 and used to purchase items needed for his household after he had moved and was unemployed. Applicant admitted that he has not made any payments on the debt and it is not resolved. Applicant plans to make payments for the debt now that his child support issue is resolved. (Item 5, PSI at 11) In his response to the FORM, Applicant stated his intent to start making payment on this debt between April 1 and April 15, 2016. He did not provide any evidence of any payments. (Item 9, Response to FORM)

Applicant admitted the credit union debt at SOR 1.e for a car loan. He was unable to make payments on the debt due to lack of income and moving. The car was repossessed and sold at auction. He believes the amount of debt is much lower than noted in the credit reports. (Item 9, Response to FORM) Applicant did not agree with any of the remaining debts. He informed the security investigator that he would research the debts and resolve the debts he could identify. In his response to the FORM, Applicant stated that the debts at SOR 1.b and 1.c are the same debt. The amount of the debts and the dates of first delinquency are the same, indicating that the debts are the same. In his response to the FORM, Applicant reported that the debts were settled for \$434.94 and paid. Applicant also noted that the insurance debt at SOR 1.g was paid in full in October 2015. He further claims that the television service debt at SOR 1.d will receive a \$50 payment each month until paid. He provided no documents to verify his assertions as to any of these debts.

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 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. 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 of potential, rather than actual, risk of compromise of classified information.

Analysis

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, thereby raising questions about an individual's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet their financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations. Unless there is extreme circumstances, failure to pay voluntarily incurred delinquent debts raises questions about a person's judgment and trustworthiness. One who does not pay his financial obligations in a timely and responsible fashion, may also show lack of responsibility in the proper handling of classified information. The person who is trustworthy in very small matter is also trustworthy in great matters. And the person who is dishonest in very small matters is dishonest in great ones.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has a history of delinquent debts as documented in his credit reports, by his admissions to the OPM investigator, and his response to the allegations in the SOR. All of Applicant's SOR debts are listed on the credit reports at Items 6, 7, and 8. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). Applicant's failure to timely file his 2008 federal tax return raises AG ¶19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same). The information raises both an inability and an unwillingness to pay delinquent debt. Once the Government has established delinquent debt, the Applicant has the responsibility to refute or mitigate those debts.

SOR allegations 1.b and 1.c allege that the same debt is delinquent. Since the debts are duplicates. I find for Applicant as to SOR 1.c.

I considered the following Financial Consideration Mitigating Conditions under 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;

(b) the conditions that resulted in the financial problems 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 has initiated a good-faith effort to repay the 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 for the dispute or provides evidence of actions to resolve the issue.

The mitigating condition AG ¶ 20(a) does not apply. Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. Applicant had long periods of unemployment.

Even though the debts were incurred by conditions beyond Applicant's control, mitigating condition AG ¶ 20(b) does not apply. Applicant has not shown that he acted reasonably and responsibly to resolve his financial problems. He noted that some debts were paid or being paid but he has not provided adequate information to show the basis of payment or any actions taken to try to resolve the debts.

Mitigating condition AG ¶20(c) does not apply. Applicant did not present any evidence concerning receiving financial counseling.

Applicant has not established a good-faith effort to pay his financial obligations. For a good-faith effort, there must be an ability to pay financial obligations, the desire to pay them, and evidence of a good-faith effort to pay or resolve the obligations. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling financial obligations is needed. Applicant must establish a meaningful track record of payment of financial obligations. A meaningful track record of payment can be established by evidence of actual payments or reduction of obligation through payment of debts. A promise to pay financial obligations is not a substitute for a track record of meeting obligations in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan. While he claims to have made payments on his debts, he did not present evidence to verify and establish the payments. Mitigating condition ¶20(d) does not apply.

Applicant did not present any information on any disputes he entered concerning any of the debts. AG ¶20(e) does not apply

The evidence does not support responsible management of his finances. His financial problems are not under control. He has not established that he contacted the creditors to resolve the debts. Based on Applicant's failure to verify the debts and make payment arrangements, it is clear that he has not been reasonable and responsible in regard to his finances. His lack of reasonable and responsible action towards his finances is a strong indication that he may not protect and safeguard classified

information. Applicant did not present sufficient information to mitigate security concerns for financial considerations.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the applicant's conduct and all relevant 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 access to classified information 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. Even though Applicant has been gainfully employed at a well-paying job since January 2013, he did not provide sufficient credible documentary information to establish that he has taken reasonable and responsible action to resolve his financial problems. Applicant did not demonstrate appropriate management of his finances and a consistent record of action to resolve financial issues. Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation.

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 - 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d – 1.h:	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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge