



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-05858
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

07/18/2016

Decision

HOGAN, Erin C., Administrative Judge:

On February 4, 2015, the Department of Defense (DOD) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD after September 1, 2006.

On February 26, 2015, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on February 2, 2016. Applicant received the FORM on February 11, 2016. Applicant had 30 days to submit a response to the FORM. He did not submit a response to the FORM. On April 4, 2016, the FORM was forwarded to the Hearing Office and assigned to me on May 23, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his response to the SOR, Applicant denied the allegations in SOR ¶ 1.f, and 1.g and admits the remaining allegations in the SOR, ¶¶ 1.a – 1.e, and 1.h. (Item 2)

Applicant is a 46-year-old employee of a DOD contractor seeking to maintain his security clearance. He has worked for his current employer since July 2013. He holds a secret security clearance. He has a high school diploma and some college. He served on active duty in the U.S. Marine Corps from 1989 to 2005. He divorced in 2003. Based on the child support entries on his credit reports, it appears he has a child or children. He did not list his children on his security clearance questionnaire. (Item 2)

On February 4, 2014, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). In response to Section 26 – Financial Record – Taxes, Applicant listed that he did not file his tax returns for 2012 and 2013 because “I don’t get much back.” In response to Section 26 – Delinquency Involving Routine Accounts, Applicant listed several delinquent accounts to include a \$900 delinquent credit card account, a \$1,000 delinquent credit card account, a \$1,300 delinquent credit card; a \$2,000 delinquent credit card; and a \$6,555 delinquent automobile loan. Applicant indicated he resigned from a high paying job in May 2007, and he was unable to pay his debts. (Item 3, section 26)

A subsequent background investigation revealed the following delinquent accounts which are alleged in the SOR: a \$166 delinquent cell phone account placed for collection in 2009 (SOR ¶ 1.a: Item 3 at 3; Item 4 at 2); a \$1,235 judgment filed against Applicant in 2009 (SOR ¶ 1.b: Item 3 at 3; Item 4 at 3; Item 5 at 1); an \$898 judgment for a delinquent credit card account filed against Applicant in 2008 (SOR ¶ 1.c: Item 3 at 3; Item 4 at 3); an \$141 cable television bill that was placed for collection (SOR ¶ 1.d: Item 3 at 4); a \$795 telephone account placed for collection in January 2014 (SOR ¶ 1.e: Item 3 at 5); a \$1,305 delinquent account placed for collection in November 2007 (SOR ¶ 1.f: Item 3 at 6, 8); and a \$2,506 delinquent credit card account placed for collection in March 2007 (SOR ¶ 1.g: Item 3 at 8). The SOR also alleges that Applicant failed to file his Virginia state tax returns for 2011 and 2012. (SOR ¶ 1.h)

In his response to the SOR, Applicant provided the following information regarding the debts:

SOR ¶ 1.a: \$161 telephone collection account: Applicant claims the account was paid in full in April 2015. He did not provide proof verifying the debt was paid. Such proof could have included receipts, cancelled checks, or a statement from the creditor that the debt was paid in full.

SOR ¶ 1.b: \$1,235 judgment filed against Applicant in 2009: Applicant states this debt was paid in April 2015. He provided copies of two checks to the creditor as well as a settlement offer to show that this debt was paid. The debt no longer appears on a credit report dated June 3, 2015. (Item 1 at 7, 8; Item 5)

SOR ¶ 1.c: \$898 judgment entered against Applicant in 2008 for a delinquent credit card account: Applicant claims the debt in SOR ¶ 1.g is a duplicate of this debt. He claims he will make payments of \$184 a month beginning in April 2015. He did not provide documentation providing proof that he is making the monthly payments. (Item 1 at 7)

SOR ¶ 1.d: \$141 cable television account: Applicant provided proof that he paid this debt in April 2010. The debt is resolved. (Item 1 at 7, 9)

SOR ¶ 1.e: \$795 delinquent telephone account placed for collection in 2014: Applicant claimed this debt would be settled in the amount of \$318.03 in April 2015. He did not provide proof of payment. (Item 1 at 7)

SOR ¶ 1.f: \$1,305 collection account. Applicant denies this debt. He is trying to identify the debt. (Item 1 at 7)

SOR ¶ 1.g: \$2,506 account placed for collection. Applicant claims this account is the same as the debt alleged in SOR ¶ 1.c. He intends to make payments of \$184 a month towards this debt. He did not provide proof that he was making payments. (Item 1 at 7) The account number for this debt is different from the account number of the debt alleged in SOR ¶ 1.c. These debts are not duplicates. (Item 3 at 3, 8)

SOR ¶ 1.h: Applicant did not file his state income tax returns for tax years 2011 and 2012. In his response to the SOR, he provided proof that he hired an accountant and filed his federal and state tax returns for tax years 2011 and 2012 on April 29, 2014. (Item 1 at 7,10)

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 when determining 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 as to 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 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 notes several disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts); AG ¶19(c) (a history of not meeting financial obligations); and AG ¶19(g) (failure to file annual Federal, state, or local income tax returns and the fraudulent filing of the same) apply to Applicant's case. Applicant encountered financial problems since 2007. The SOR

alleges seven delinquent accounts, an approximate total of \$7,046. Applicant did not file his state income tax returns for 2011 and 2012. AG ¶19(a), AG ¶19(c), and AG ¶19(g) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving 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 pay debts under agreed terms. 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 not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's admissions raised security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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);

AG ¶ 20(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);

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);

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts); and

AG ¶ 20(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).

AG ¶ 20(a) cannot be applied because Applicant did not provide a sufficient explanation for the cause of his financial problems. In his response to the SOR, Applicant indicated he was taking action to resolve his debts, but did not provide sufficient proof that he actually resolved the debts. While several of the debts were not listed on the June 2015 credit report, it does not mean that the debts were resolved. Debts that are more than seven years old are removed from an individual's credit report in accordance with the law. Applicant had several old debts that could have been removed because the seven-year period had passed. Applicant provided no information about the current status of his financial situation. For these reasons, Applicant's past financial problems continue to cast doubt on his current reliability, trustworthiness, and judgment.

AG ¶ 20(b) partially applies, because Applicant's financial problems were likely aggravated by his 2003 divorce even though the divorce occurred over 13 years ago. Applicant also mentioned on his security clearance questionnaire that he left a well-paying job in 2007. It is unclear whether he left the job involuntarily or of his own accord. It is also noted that this occurred over nine years ago. While circumstances beyond his control may have aggravated Applicant's financial situation, I cannot conclude that he acted responsibly under the circumstances. Applicant did not have a good justification for his failure to file his federal and state income returns in 2011 and 2012. Filing his tax returns was well within his control. He made a deliberate decision not to file because he did not think he would receive a large refund after filing. He filed his tax returns in 2014 after he submitted his security clearance application. Applicant appears to have begun to repay his debts in reaction to the security clearance process. Most of the debts alleged in the SOR were neglected for years. I cannot conclude Applicant behaved responsibly under the circumstances. For this reason, AG ¶20(b) is given less weight.

AG ¶ 20(c) does not apply. There is no record Applicant received financial counseling. While Applicant states he planned to resolve his accounts, he did not follow up with documents proving that he has paid or is making payments towards his debts such as receipts, paid-in-full statements from the creditors, copies of cancelled checks or money orders. Information about Applicant's current financial situation is unknown.

AG ¶ 20(d) applies with respect to the debts alleged in SOR ¶¶1.b, 1.d, and 1.h. Applicant provided sufficient proof that the debts alleged in SOR ¶¶1.b and 1.d were resolved. He also filed his 2011 and 2012 state income tax returns and does not owe any taxes. He did not provide proof that the other debts alleged in the SOR were resolved.

AG ¶ 20(e) potentially applies with respect to the debt alleged in SOR ¶ 1.f. Applicant denied this debt because he does not recognize it. He did not indicate whether he took steps to formally dispute this debt and the outcome of any dispute made. For this reason, AG ¶ 20(e) 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 the 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.

I considered Applicant's service in the United States Marines and his three years of employment with a DOD contractor. While Applicant provided some evidence that he intended to resolve the debts alleged in the SOR, he did not follow through by providing evidence that he either paid or is regularly paying on his delinquent accounts.

In requesting an administrative determination, Applicant chose to rely on the written record. However, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances and facts that would mitigate financial considerations security concerns. It is unknown whether Applicant has sufficient income to meet his current financial obligations. Applicant did not mitigate the concerns arising from financial considerations.

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.c, 1.e – 1.g:	Against Applicant
Subparagraphs 1.b, 1.d, and 1.h:	For 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.

ERIN C. HOGAN
Administrative Judge