



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-06369
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

01/25/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 27, 2016, 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 (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 by the DOD on September 1, 2006.

Applicant responded to the SOR on March 2, 2016, and he elected to have the case decided on the written record in lieu of a hearing. On March 30, 2016, the Government submitted its file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on April 6, 2016. Applicant was afforded an opportunity to respond to the FORM within 30 days of its receipt and to file

objections and submit material to refute, extenuate, or mitigate the security concerns. He did not provide any response. The case was assigned to me on December 5, 2016.

Procedural Issues

In the FORM, Department Counsel references FORM Items 1-5. FORM Items 1 and 2, consisting of the SOR and Applicant's response to the SOR, are pleadings and are entered into the administrative record. FORM Item 4 is an unauthenticated summary of a June 10, 2014 interview with a government background investigator. In the FORM, Department Counsel advised Applicant that he could object to FORM Item 4 and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be constituted as a waiver, and the evidence would be considered by me. Applicant failed to respond to the FORM, and he raised no objections.¹ Therefore, I admitted the Government Exhibits, identified as FORM Items 3-5,² without objection.

Findings of Fact

Applicant is 54 years old. He graduated from high school in 1980. From November 2006 to November 2014, he was employed by a DOD contractor. After two months of unemployment, Applicant worked in retail sales from January 2015 to October 2015. Since October 2015, he has been employed by the previous DOD contractor.³ During his security interview, Applicant noted that his income was significantly reduced in about 2008 when his employer reduced his overtime opportunities.⁴

Applicant has been married to his second wife since October 2007. He was previously married from 1996 to 2002. Applicant has three adult stepchildren from his second marriage, and none of these stepchildren resides with him and his wife.⁵

The SOR alleges 7 medical collections, 2 utility debts, 1 unpaid judgment, and 16 delinquent consumer debts, totaling \$28,351. In his response to the SOR, Applicant

¹ See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016)(Applicant's waiver of the authentication element must be knowing and intelligent. The Judge's exclusion of the Report of Interview, containing mitigating evidence, was found to be error following applicant's appeal.). See also ISCR Case No. 14-06781 at 3 (App. Bd. Dec. 16, 2016)(By not responding to the Government's FORM, "Applicant waived any objection he might have had to this document.").

² The Government's FORM lists FORM Item 5 (the credit report) as consisting of 9 pages, when in fact this document consists of 12 pages.

³ Item 3.

⁴ Item 4.

⁵ Item 3.

admitted all of the alleged debts, except for the three accounts alleged in SOR ¶¶ 1.r., 1.s., and 1.t.⁶

During his June 2014 security interview, on his October 2015 security clearance application, and in his March 2016 response to the SOR, Applicant admitted the alleged debts and expressed an intent to pay these delinquent accounts; however, he provided no evidence of any payments or steps taken to resolve them.⁷ All 25 alleged debts are listed on Applicant's May 2014 credit report, which shows that these debts became delinquent over a period spanning September 2007 to April 2014:

SOR ¶	Creditor	Balance	Date of Delinquency⁸	Evidence
1.a.	Medical	\$409	4/2011	Item 5 at 9
1.b.	Medical	\$319	1/2010	Item 5 at 10
1.c.	Utility/Cable	\$306	10/2013	Item 5 at 10
1.d.	Medical	\$265	1/2010	Item 5 at 10
1.e.	Medical	\$146	4/2011	Item 5 at 11
1.f.	Judgment	\$1,119	11/2011	Item 5 at 3
1.g.	Defaulted car loan	\$14,835	8/2008	Item 5 at 4
1.h.	Consumer debt	\$3,623	3/2008	Item 5 at 4
1.i.	Consumer debt	\$1,073	1/2008	Item 5 at 4
1.j.	Consumer debt	\$650	5/2008	Item 5 at 4
1.k.	Consumer debt	\$579	9/2007	Item 5 at 5
1.l.	Consumer debt	\$467	4/2008	Item 5 at 5
1.m.	Consumer debt	\$445	4/2008	Item 5 at 5
1.n.	Consumer debt	\$1,013	3/2014	Item 5 at 8
1.o.	Consumer debt	\$933	8/2009	Item 5 at 8
1.p.	Medical	\$449	10/2012	Item 5 at 9
1.q.	Medical	\$398	3/2012	Item 5 at 9
1.r.	Consumer debt	\$326	8/2012	Item 5 at 9
1.s.	Consumer debt	\$326	8/2012	Item 5 at 9
1.t.	Consumer debt	\$326	8/2012	Item 5 at 10
1.u.	Utility	\$154	4/2014	Item 5 at 10
1.v.	Medical	\$61	7/2013	Item 5 at 11
1.w.	Consumer debt	\$55	8/2013	Item 5 at 11
1.x.	Consumer debt	\$42	8/2012	Item 5 at 11
1.y.	Consumer debt	\$32	11/2012	Item 5 at 12

⁶ See ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995)(Applicant's admissions to SOR allegations relieve Department Counsel of the obligation to prove the admitted allegations).

⁷ Items 2, 3, and 4.

⁸ For the "Date of Delinquency," I used the "Date of Last Activity" or when the account was assigned to collection or charged off, according to the May 2014 credit report.

In his response to the SOR, Applicant denied the debts alleged in SOR ¶¶ 1.r., 1.s., and 1.t., claiming that there was only one debt and that it had been paid.⁹ Applicant provided no documentation to corroborate this claim.

Applicant's financial problems arose from his reduced income in about 2008, when his overtime opportunities decreased.¹⁰ He further explained that he had two surgeries – in about 2010 and 2012 – which, while mostly covered by health insurance, caused him to incur some additional expenses.¹¹ Applicant did not provide any information about his income reduction, his current monthly income and expenses, debt counseling, or other steps taken to resolve the 25 alleged debts.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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

⁹ Item 2.

¹⁰ Item 4.

¹¹ Item 2.

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.

Section 7 of EO 10865 provides that adverse 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 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 conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

The 25 alleged debts, which became delinquent between 2007 and 2014, total approximately \$28,351. Accordingly, the evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

The Government established a case for disqualification. Accordingly, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.¹² An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹³ Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

¹² Directive ¶ E3.1.15.

¹³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

(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; and

(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.

Applicant's financial problems are ongoing and the reduced overtime opportunities remain. Moreover, there is no evidence that Applicant has taken any steps to resolve or repay the 25 alleged debts. As a result, doubts remain as to Applicant's good judgment and financial responsibility. Thus, AG ¶ 20(a) is not applicable.

The application of AG ¶ 20(b) requires both (1) Applicant's financial indebtedness resulted from circumstances beyond his control and (2) Applicant acted responsibly under the circumstances.¹⁴ Applicant provided limited information about his reduced overtime opportunities and his two surgeries. Nonetheless, because Applicant's reduced income may have hindered his ability to address his delinquent debts, it may constitute circumstances beyond one's control in the context of AG ¶ 20(b).

AG ¶ 20(b) also requires that an applicant act responsibly under the circumstances. The second prong of AG ¶ 20(b) does not require an applicant to be debt-free or to develop a plan for paying off all debts immediately or simultaneously.¹⁵ Here, there is insufficient evidence to conclude that Applicant acted responsibly to address his delinquent debts or to develop and implement a reasonable debt repayment plan. In response to the SOR, Applicant stated that he no longer lives beyond his means and is financially responsible; however, he provided no evidence or

¹⁴ See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

¹⁵ ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) ("All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan.").

documentation to show that he can pay his monthly bills. Furthermore, he provided no evidence of a plan to resolve his delinquent debts or of any steps taken in furtherance of a debt resolution plan. Therefore, I conclude that AG ¶ 20(b) does not apply.

There is neither record evidence of credit counseling nor record evidence, such as a monthly budget, to conclude that there are clear indications that Applicant's financial problems are under control. Rather, the absence of evidence of payments or other steps to resolve the alleged delinquent debts undercuts such a conclusion. Therefore, AG ¶ 20(c) does not apply.

Similarly, there is no record evidence of any payments made or steps taken by Applicant to resolve his delinquent debts. Therefore, AG ¶ 20(d) does not apply.

To the extent Applicant disputes the legitimacy of the three collection accounts alleged in SOR ¶¶ 1.r., 1.s., and 1.t., he has not provided the requisite documentation to establish a reasonable basis for his dispute. Applicant has not provided substantial evidence to demonstrate that he is not liable for these three debts. Thus, AG ¶ 20(e) does not apply.

Absent evidence of debt repayment and financial responsibility, I find that financial considerations concerns remain.

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 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 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. I have incorporated my comments under Guideline F and the factors in AG ¶ 2(c) in this whole-person analysis.

Applicant was provided an opportunity in his SOR response and in response to the Government's FORM to show what steps he has taken to resolve these delinquencies, and to provide documentation. Applicant presented only limited information about his reduced income and circumstances that hindered his ability to address his delinquent debts, and he provided no evidence of any steps taken to resolve his delinquent debts. As a result, the totality of the record evidence leaves me with doubts as to Applicant's suitability for a security clearance. I conclude Applicant did not mitigate 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
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Subparagraphs 1.a.-1.y.:	Against Applicant
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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.

Eric H. Borgstrom
Administrative Judge