



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-00210
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

05/19/2017

Decision

HOGAN, Erin C., Administrative Judge:

On August 25, 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 (EO) 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 DOD after September 1, 2006.

On November 6, 2015, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on May 18, 2016. Applicant received the FORM on June 2, 2016. He had 30 days from the receipt of the FORM to submit matters in response to the FORM. Applicant timely submitted a response to the FORM. (Item 7) The case was forwarded to the Hearing Office on June 29, 2016, and assigned to me on March 21, 2017. 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 admits all SOR allegations. (Item 2)

Applicant is an employee of a DOD contractor seeking a security clearance. He has worked for his current employer since April 2012. He is a high school graduate. He is married and has two adult sons from a previous relationship. He had one period of unemployment from June 2007 to April 2008. (Item 3)

On June 7, 2012, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). (Item 2) In "Section 26, Financial Record – Delinquency Involving Routine Accounts," Applicant indicated that he had several delinquent accounts, including a home foreclosure and a credit card account. (Item 3, section 26)

A subsequent background investigation revealed the following delinquent accounts: a \$42,776 home mortgage foreclosure that was charged off in 2011 (SOR ¶ 1.a: Item 4 at 5, 7; Item 6 at 1); a \$1,075 account that was charged off in June 2014 (SOR ¶ 1.b: Item 6 at 2); a \$451 medical account placed for collection in August 2014 (SOR ¶ 1.c: Item 6 at 2); a \$449 utility account placed for collection in July 2012 (SOR ¶ 1.d: Item 6 at 2); a \$407 account placed for collection in June 2014 (SOR ¶ 1.e: Item 6 at 2); and an \$83 medical account placed for collection in June 2010. (SOR ¶ 1.f: Item 4 at 6; Item 6 at 2)

Additional delinquent accounts include: a \$43 medical account placed for collection in April 2012 (SOR ¶ 1.g: Item 4 at 6; Item 6 at 2); an account with a bank that was charged off in December 2013 (SOR ¶ 1.h: Item 6 at 2); a department store credit card account that was charged off in May 2013 (SOR ¶ 1.i: Item 6 at 3); a \$3,678 state tax lien filed in September 2002 (SOR ¶ 1.j: Item 4 at 4); a \$320 judgment filed against Applicant in 2008 (SOR ¶ 1.k: Item 4 at 4); a \$191 judgment filed against Applicant in 2008 (SOR ¶ 1.l: Item 4 at 4); a credit card that was charged off in September 2009. (SOR ¶ 1.m: Item 4 at 8); and a \$291 account that was placed for collection in May 2011. (SOR ¶ 1.n: Item 4 at 5)

In his Response to the SOR, Applicant admits all of the debts alleged in the SOR. He claims the debts became delinquent because of financial difficulties. He indicated that he was entering payment arrangements to pay off the debts alleged in SOR ¶¶ 1.c, 1.h, and 1.m. He said that he paid down the balance of the state tax lien alleged in SOR ¶ 1.j to \$766.80. He claims the two judgments alleged in SOR ¶¶ 1.k and 1.l were being paid through garnishment. Applicant did not provide any documentation verifying his payment arrangements, such as receipts, bank statements, a copy of the payment history from the creditor, a repayment agreement, etc. I find for Applicant with regard to the debts alleged in SOR ¶¶ 1.h, 1.i, and 1.m because the credit reports dated May 15, 2012, and December 15, 2014, indicate all of these accounts have a zero balance. (Item 4 at 5, Item 6 at 2-3)

Applicant did not provide documentation showing he was making payments in his response to FORM. He provided a copy of the SOR and wrote the phrase, "to the best of my knowledge" next to each SOR allegation. Applicant did not provide information on his current financial situation such as his monthly income and monthly expenses. (Item 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 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 EO 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) and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant's case. Applicant has 14 delinquent debts, owing approximately \$49,764. The largest debt was a mortgage foreclosure in the amount of \$42,776. The delinquent debts were incurred between 2008 and 2014. Applicant has a history of financial irresponsibility.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their 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 raise 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.

¶ 20(a) does not apply. Applicant's financial problems continue. Most of his delinquent debts remain unresolved. Most of the debts have relatively small balances, but Applicant has not provided documentation of his efforts to resolve these delinquent accounts. Questions about Applicant's reliability, trustworthiness, and good judgment remain.

The first part AG ¶ 20(b) applies because Applicant endured a period of unemployment between June 2007 to April 2008. This is considered a condition beyond Applicant's control. However, I cannot conclude that Applicant acted responsibly under the circumstances because Applicant continued to incur delinquent debts after becoming employed full time. He provided no proof that he is taking action towards resolving his delinquent accounts.

AG ¶ 20(c) does not apply. There is no evidence that Applicant attended financial counseling. He did not provide information about his current financial status. Applicant's financial problems are unlikely to be resolved in the near future.

AG ¶ 20(d) partially applies because Applicant appears to have resolved the debts alleged in SOR ¶¶ 1.h, 1.i, and 1.m. He did not demonstrate that he was making

a good-faith effort to resolve his remaining delinquent accounts. For this reason AG ¶ 20(d) is given less weight.

AG ¶ 20(e) does not apply, because Applicant does not dispute any of the debts alleged in the SOR.

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.

In requesting an administrative determination, Applicant chose to rely on the written record. However, he failed to provide sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances that would mitigate financial considerations security concerns. While Applicant resolved three of the debts, the remaining 11 debts are unresolved. It is unknown whether Applicant has sufficient income to meet his financial obligations.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant may be able to demonstrate a track record of resolving his financial obligations at some point in the future. At present, it is too soon to make this conclusion. The security concerns raised under financial considerations are not mitigated.

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.g, 1.j- 1.l, and 1.n:	Against Applicant
Subparagraphs 1.h, 1.i, and 1.m:	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