



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



In the matter of:)
)
) ISCR Case No. 15-00622
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

02/16/2017

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to provide any documentary evidence to substantiate his contention that his financial problems are under control. Clearance is denied.

Statement of the Case

On August 15, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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; Department of Defense 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.

On January 9, 2016, Applicant answered the SOR, admitting subparagraphs 1.a and 1.b, and denying subparagraph 1.d, and not answering subparagraphs 1.c and 1.e.¹ He requested a decision on the record rather than a hearing. On March 14, 2016, Department Counsel prepared a File of Relevant Material (FORM) consisting of documents supporting the Government's allegations. Applicant received the file on March 18, 2016, and was informed via a transmittal letter, mailed by the Defense Office of Hearings and Appeals (DOHA), that he had until April 17, 2016 to submit a response.² Applicant did not reply, and the case was subsequently assigned to me on December 6, 2016.

Findings of Fact

Applicant is a 44-year-old married man with two teenage children from a prior marriage. After graduating from college in 1995, he entered the Army where he served on active duty from 1996 to his honorable discharge in 1999. (Item 3 at 19) Since August 2008, he has worked for the same employer. He has held a security clearance since 2009.

Applicant has approximately \$36,000 of delinquent debt. (Items 5-6) Approximately \$24,000 of this debt, as alleged in SOR subparagraph 1.a, constitutes child support arrearages, and the remainder of the debt is owed to credit-card companies. Applicant contends that he is paying the child support obligation through a wage garnishment, and that he has satisfied subparagraph 1.d, and is in the process of consolidating the remaining SOR delinquent debts. He provided no corroborating evidence supporting any of these contentions.

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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."

¹During an interview with an investigative agent in August 2012, Applicant contended that he had satisfied subparagraphs 1.c and 1.e. Therefore, I shall construe his non-Answer to these SOR allegations as denials.

²The transmittal letter is included in the file as Administrative Exhibit I.

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.

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Applicant has approximately \$36,000 of outstanding delinquent debt, the majority of which is composed of a child-support delinquency. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable.

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant provided no evidence supporting his contention that he has either satisfied or is making payments towards the satisfaction of any of the SOR debts. Under these circumstances, none of the mitigating circumstances applies, and Applicant has failed to 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.e:	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.

MARC E. CURRY
Administrative Judge