



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



In the matter of:

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) ISCR Case No. 15-00778
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Applicant for Security Clearance

Appearances

For Government: Andrew H. Henderson, Esquire, Department Counsel

For Applicant: *Pro se*

01/23/2017

Decision

WHITE, David M., Administrative Judge:

Applicant has a lengthy history of financial irresponsibility and significant delinquent debt that he is without the means to resolve. Resulting security concerns were not mitigated. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information denied.

Statement of the Case

Applicant submitted a security clearance application on July 3, 2012. On October 30, 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on November 25, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 14, 2016. The case was assigned to me on May 2, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 13, 2016, setting the hearing date for June 2, 2016, and I convened the hearing as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection except as to the weight to be afforded some entries on GE 5. (See Tr. 31-34.) Applicant offered Exhibits (AE) A through C, which were admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until July 5, 2016, to permit him to submit additional evidence. On that date he submitted AE D, to which Department Counsel had no objection. AE D was admitted into the record, which closed as scheduled. DOHA received the transcript of the hearing (Tr.) on June 13, 2016.

Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. He is a high school graduate who completed some college courses without earning a degree. He has held a security clearance since 2003, originally in connection with his service in the Air Force Reserve, and is seeking to renew it in connection with his current employment. He is married, with two children and two stepchildren. (GE 1; Tr. 6, 12, 67-68.)

The SOR alleges 12 delinquent debts owed by Applicant, ranging from \$24 to \$16,456, and totaling \$31,594. In his Answer, Applicant admitted the factual allegations concerning the delinquent debts set forth in SOR ¶¶ 1.b, 1.f, and 1.i, totaling \$8,335. He admitted having received the medical services associated with the delinquent debts alleged in SOR ¶¶ 1.g, 1.h, 1.j, and 1.k, which total \$331, but expressed surprise that those debts were outstanding and said he would work to pay them from his Health Savings Account. He denied the allegations in SOR ¶¶ 1.a and 1.c, totaling \$21,819, because he claimed not to have any record or memory of those delinquent debts. He also denied the allegations in SOR ¶¶ 1.d, 1.e, and 1.i, totaling \$1,109, and stated that those debts were supposed to have been settled. (Answer.) Applicant's admissions, and accompanying explanations, are incorporated in the following findings.

All of the SOR-listed delinquent debts, including those denied by Applicant, are reported on his credit bureau reports (CBR) dated July 19, 2012; January 15, 2015; and/or March 22, 2016. (GE 3; GE 4; GE 5.) In his Answer, Applicant admitted the Federal tax lien in the amount of \$2,279 that was alleged in SOR ¶ 1.i. That lien amount was reported on his most recent CBR to have grown to \$38,771; an amount which Applicant acknowledged reflected his total combined Federal income tax debt at that time. His history of failing to file and pay his Federal income taxes dates back to 1989. (GE 5 at 1; Tr. 35, 46-51, 61-62.)

Although Applicant indicated in his November 2015 Answer that he would address his delinquent medical debts by using his Health Savings Account, he offered no evidence of having done so before the record closed in July 2016. The only evidence

Applicant submitted concerning his medical debts was an April 28, 2015 account statement from a medical provider, citing an account number that does not match any of the medical debts alleged in the SOR, which showed an outstanding unpaid balance of \$265. (Answer; AE D.)

Applicant claimed that he submitted several years of unfiled Federal income tax returns and an Offer in Compromise (OIC) to the Internal Revenue Service (IRS) in an attempt to resolve his Federal income tax delinquencies. The documents he provided were unsigned and offered no indication that any of them had been submitted to the IRS. His latest draft Offer in Compromise form reflected a net monthly income of \$6,347 and monthly expenses of \$7,376 resulting in a monthly deficit of \$1,029. In Section 3 of that document, he said that he was seeking the OIC because he was not making enough money to keep up with his regular bills and needed to improve his credit rating to reduce interest rates he is being charged. Applicant has not sought or participated in financial counseling, and essentially did nothing to pursue resolution of any of his alleged delinquencies since receiving his SOR. (Answer; AE D; Tr. 51-66, 75.)

Applicant provided no evidence from supervisors, colleagues, associates, or family members concerning his character, trustworthiness, work performance, or track record with respect to following regulations and procedures relating to protection of sensitive information.

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹

¹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant has a history of not meeting his financial obligations, which began in 1989 and continues to date. He admits having insufficient income to pay his delinquent debts, and a monthly deficit of more than \$1,000 that prevents meeting ongoing obligations. The evidence raises both of the above disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 delinquencies are ongoing, and he made no effective effort to address any of his SOR-listed debts, including four that involved less than \$100. His budget does not provide sufficient funds to meet his regular monthly expenses. The evidence does not establish mitigation under AG ¶ 20(a). There is no evidence that the financial problems are attributable to circumstances beyond his control, or that he has responsibly handled his financial obligations, which would be necessary to establish mitigation under AG ¶ 20(b).

Applicant has not participated in financial counseling, and his budget does not demonstrate that his financial problems are under control. The evidence establishes no mitigation under AG ¶¶ 20(c) or (d). He did not provide any reasonable basis to dispute the legitimacy of the SOR-alleged debts, or document a basis for any such dispute, so no mitigation was established under AG ¶ 20(e).

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 pertinent facts and circumstances surrounding this case. Applicant is a sincere and mature individual, with a consistent professional history of loyal service to the United States. However, he has a lengthy history of financial irresponsibility and all record evidence indicates that his situation is more likely to deteriorate than to improve. His actions have neither eliminated the potential for pressure, coercion, or duress, nor made the continuation or recurrence of security concerns unlikely. Overall, the record evidence creates significant doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: **AGAINST APPLICANT**

Subparagraphs 1.a through 1.i: 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge