



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



In the matter of:

ISCR Case No. 15-00860

Applicant for Security Clearance

Appearances

For Government: Rhett Petcher, Esq., Department Counsel

For Applicant: *Pro se*

07/22/2016

Decision

CREAN, Thomas M., Administrative Judge:

Applicant did not provide sufficient documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On July 29, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on September 11, 2014. (Item 3) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On November 12, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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) effective in the DOD on September 1, 2006.

Applicant answered the SOR on December 10, 2015. He admitted 5 of the 16 allegations of delinquent debt with explanations. He did not have knowledge of seven accounts so he denied the seven debts. He directly denied four debts. He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on January 19, 2016. Applicant received a complete file of relevant material (FORM) on January 28, 2016, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not respond to the FORM. I was assigned the case on June 9, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM agent (Item 3) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the summary. Applicant did not respond to the FORM so he did not raise any objection to consideration of the information in the PSI. Any objection to the information is waived. I will consider information in the PSI in my decision.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 50 years old. He is seeking employment in a defense contractor shipyard as a shipfitter. Applicant worked as an iron worker from April 2004 until February 2011 when his employer went out of business. He has been unemployed from March 2011. During some of this time, he drew state unemployment compensation. He has been offered employment at the shipyard but he is waiting for the decision on his access to classified information to commence working. He had five children from a relationship before marrying in July 1999. He also has two stepchildren. (Item 2, e-QIP, dated July 29, 2014; Item 3, PSI, dated September 11, 2014)

The SOR lists, and credit reports (Item 4, dated August 9, 2014, and Item 5, dated July 8, 2015) confirm the following delinquent debts for Applicant: a medical account in collection for \$844 (SOR 1.a); accounts to a law firm collecting for a health exercise client for \$137 (SOR 1.b), \$549 (SOR 1.c), \$129 (SOR 1.d), and \$463 (SOR 1.e); a television account for \$956 (SOR 1.f); a credit card account in collection for \$2,284 (SOR 1.g); three telephone accounts for the same provider in collection for \$915

(SOR 1.h), \$847 (SOR 1.i), and \$1,880 (SOR 1.j); a credit card charged off for \$277 (SOR 1.k); a credit card debt charged off for \$684 (SOR 1.l); an automobile repossession charged off for \$12,294 (SOR 1.m); an account charged off for \$2,450 (SOR 1.n); a store account placed for collection for \$580 (SOR 1.o); and a debt to a city for a traffic ticket for \$75 (SOR 1.p). The amount of the delinquent debt is approximately \$25,384, with over 50% of the debt being the car repossession debt. All of these debts are listed on the credit reports. Applicant admitted to the OPM security investigator that he owed an unknown amount in back child support that the mother of the children is not seeking. However, he believes the state is seeking the back child support. (Item 3, PSI, dated September 11, 2014)

Applicant attributes his debts to long-term unemployment. Applicant's wife has reportedly been employed during his periods of unemployment. She has been the financial provider for the family. Applicant claims he is able to live within his means, and no one should question his willingness to pay his debts. He intends to pay the past-due debts listed on his credit reports once he starts work at the shipyard. He describes his current financial situation as "tough" and is relying on his potential employment at the shipyard to start paying his past due bills. Applicant presented no information concerning any attempts to contact creditors or to pay debts. (Response to SOR, dated December 10, 2015; Item 3, PSI, dated September 11, 2014)

In his response to the SOR, Applicant acknowledges that he has debt and he struggles financially. He owes some of the SOR debts and he has little if any knowledge of the other debts. Of the unknown debts, Applicant stated that he will "look into them". He presented no information of any attempt to learn more about his debts. He acknowledges that he had telephone service with the telephone service provider at SOR 1.h to 1.j. Applicant disputes the amount owed. He presented no information on attempts to resolve disputes with the creditor.

Applicant notes that he never received any correspondence from some creditors, so he does not know anything about these debts. He presented no information of attempts to contact the creditors listed on the credit reports. He presented no information of attempts to contact the creditors for debts he admits.

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 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 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 for 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

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, thereby raising 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or 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 repay 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 finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has a history of delinquent debts as documented in his credit reports, by his admissions to the OPM investigator, and his response to the allegations in the SOR. All of Applicant's SOR debts are listed on the credit reports at Items 4 and 5. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises both an inability and an unwillingness to pay delinquent debt. Once the Government has established delinquent debt, the Applicant has the responsibility to refute or mitigate those debts.

I considered the following Financial Consideration Mitigating Conditions under 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;
- (b) the conditions that resulted in the financial problems 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 has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

The mitigating conditions do not apply. Even though Applicant had long periods of unemployment, he did not establish that his delinquent debt was incurred as a result of these conditions. He did receive some unemployment compensation and his wife has been employed during his periods of unemployment. Applicant did not provide any information to establish that he is paying or has paid any delinquent debts. He has not shown that he acted reasonably and responsibly to resolve his financial problems. The evidence does not support responsible management of his finances. His financial problems are not under control. Applicant claims lack of knowledge of some of the debts, but he made no attempt to learn of the debts. He knows about some of the debts, but he has not contacted the creditors. Based on Applicant's failure to verify his debts and make any arrangements to pay his debts, it is clear that he has not been

reasonable and responsible in regard to his finances. His lack of reasonable and responsible action towards his finances is a strong indication that he will not protect and safeguard classified information. Applicant did not present sufficient information to mitigate security concerns for financial considerations.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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. Applicant did not provide sufficient credible documentary information to show that he paid or is paying his delinquent debts. He did not establish that he has taken reasonable and responsible action to resolve his financial problems. Applicant did not demonstrate appropriate management of his finances and a consistent record of action to resolve financial issues. Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation.

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.p:	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 Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge