



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-01400
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. DeAngelis, Esquire, Department Counsel
For Applicant: *Pro se*

05/31/2017

Decision

HOGAN, Erin C., Administrative Judge:

On November 19, 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 Department of Defense after September 1, 2006.

On June 2, 2016, Applicant answered the SOR and requested a decision based on the written record. Department Counsel issued a File of Relevant Material (FORM) on August 17, 2016. Applicant received the FORM on August 29, 2016. He had 30 days from his receipt of the FORM to submit additional information in response to the FORM. Applicant did not submit matters in response to the FORM. On October 11, 2016, the FORM was forwarded to the Hearing Office and assigned to me on May 26, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his response to the SOR, Applicant admits all SOR allegations.

Applicant is an employee of a DOD contractor seeking to maintain a security clearance. He has worked for his current employer since June 2011. He has held a secret security clearance since 1998. He served on active duty in the United States Marine Corps from November 1996 to June 2006, separating with an honorable discharge. He is divorced. (Item 4)

On October 22, 2012, Applicant submitted a security clearance application as part of a periodic background investigation related to his security clearance. A subsequent background investigation revealed that Applicant and his then wife filed for Chapter 7 bankruptcy on May 30, 2014. He listed assets of \$53,422 and liabilities of \$132,002.76. His monthly income was \$6,844.48. His debts were discharged by the bankruptcy court on November 20, 2014. (SOR ¶ 1.b: Item 8) Applicant also owes approximately \$16,297 on a charged-off automobile loan. (SOR ¶ 1.a: Item 6 at 1; Item 7 at 2)

In his response to the SOR, Applicant admits he filed for bankruptcy in 2014 with his wife. After the bankruptcy was complete, his wife filed for divorce. He admits that he co-signed the automobile loan for the debt alleged in SOR ¶ 1.a. He claims the car was in his ex-wife's possession. She arranged to have the car voluntarily repossessed. Applicant states the debt remains because his financial situation is being "restructured" as a result of child support, alimony, and attorney fees from the divorce that began on July 22, 2014. (Item 3)

The automobile debt alleged in SOR ¶ 1.a remains on his most recent credit report, dated July 19, 2016. (Item 7 at 2) The July 2016 credit report also lists several debts that were not alleged in the SOR. The debts include another automobile loan that was opened in February 2015, that was charged off in August 2016; a \$79 debt for a returned check that was charged off in November 2015; and a \$5,910 debt owed to the Veteran's Administration related to a government overpayment which was placed for collection in June 2015. (Item 7 at 2-3) In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the DOHA Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have considered the non-SOR derogatory

information accordingly. Applicant's non-SOR conduct will not be considered for disqualification purposes, and consideration will be limited to the five circumstances outlined by the appeal board.

Applicant did not provide updated information on his financial situation.

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 Executive Order 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 incurred several delinquent debts which resulted in a Chapter 7 bankruptcy filing in 2014. He incurred an additional delinquent debt after the bankruptcy. Both AG ¶ 19(a) and AG ¶ 19(c) apply.

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 own 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. September 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).

AG ¶ 20(a) does not apply because Applicant continued to incur delinquent accounts after the bankruptcy. He continues to have issues with financial responsibility.

AG ¶ 20(b) applies, in part, because Applicant's financial situation was adversely affected by his divorce. However, the debts discharged in the bankruptcy were incurred during Applicant's marriage. He did not explain the cause of these financial problems. He also continued to incur delinquent debts after the divorce and bankruptcy. This mitigating condition is given less weight because I cannot conclude Applicant behaved responsibly under the circumstances.

AG ¶ 20(c) applies, in part, because Applicant was required to attend financial counseling as a requirement for his Chapter 7 bankruptcy. Despite this counseling, he continues to incur delinquent debts. His financial situation is not yet under control.

AG ¶ 20(d) does not apply. While filing for bankruptcy is a legal way to resolve one's debts, it does not demonstrate a good-faith effort to resolve one's accounts.

AG ¶ 20(e) does not apply to the facts of this case. Applicant did not dispute any of the issues in the SOR.

Overall, Applicant did not provide sufficient evidence to mitigate the concern under financial considerations.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's honorable active duty service in the U.S. Marine Corps. I considered his favorable employment with a DoD contractor since June 2011. I considered Applicant's divorce and his Chapter 7 bankruptcy. Applicant continued to incur delinquent accounts after his bankruptcy. He has not demonstrated that he has adapted to a financially responsible lifestyle. A security concern remains under financial considerations.

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.b:	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 a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge