



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



In the matter of:

ISCR Case No. 15-01476

Applicant for Security Clearance

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel

For Applicant: *Pro se*

09/09/2016

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 August 4, 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 17, 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 September 14, 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 October 13, 2015. He admitted the 16 allegations of delinquent debt with explanations. He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on January 14, 2016. Applicant received a complete file of relevant material (FORM) on February 11, 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 August 16, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM agent (Item 5) 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 56 years old. He received a bachelor's degree in 2007 and a master's degree in 2009. He served 20 years in the Air Force Reserve and was honorably discharged in October 2000. He was granted eligibility for access to classified information from June 1980 until April 1997 while employed by the Air Force. He first married in November 1984 and divorced in October 2000. He married his present wife in February 2001. He has three children and a stepson. Applicant's main occupation has been as a trainer. He was a trainer for the Air Force from October 1988 until April 1997. He was employed as a senior trainer and development manager for a business from April 1997 until April 2005. He was employed by another business as a training coordinator from April 2005 until April 2012. From April 2012 until April 2013, he was a training and development coordinator for another business. He was terminated from that position and was unemployed from April 2013 until July 2014. In July 2014, he was employed by his present defense contractor employer as a training specialist. There is no information in the file if Applicant received unemployment compensation while unemployed, or if his wife is working and contributing to the family finances. (Item 2, e-QIP, dated August 4, 2014; and Item 3, PSI, dated September 17, 2014)

The SOR lists and credit reports (Item 5, dated August 7, 2014, and Item 6, dated August 20, 2015) confirm the following delinquent debts for Applicant: two state tax liens from the same state for \$2,925 (SOR 1.a), and \$2,389 (SOR 1.b); two credit cards for different stores in collection from the same creditor for \$601 (SOR 1.c), and \$549 (SOR 1.d); eight education loans in collection totaling approximately \$52,850 (SOR 1.e); a car repossession debt charged off for \$1,651 (SOR 1.f); the same car repossession debt past due for \$1,071 on a balance of \$16,190 (SOR 1.g); a mortgage past due for approximately \$28,459 on a balance of \$199,310 (SOR 1.h); a tax lien of \$327 (SOR 1.i); a car loan in collection for \$2,457 (SOR 1.j); a debt in collection for \$525 (SOR 1.k); a debt in collection for \$64 (SOR 1.l); a mortgage account past due for \$16,249 on a balance of \$37,322 (SOR 1.m); a store credit card charged off for \$600 (SOR 1.n); an automobile loan charged off for \$2,457 as listed in SOR 1.j (SOR 1.o); and a telephone account in collection for \$359 (SOR 1.p). The amount of the delinquent debt listed in the SOR is approximately \$113,533, with most of the debt coming from delinquent student loans and mortgages.

All of these debts are listed on the credit reports. There is also a Joint Adjudication Activities System (JPAS) report acknowledging the liens listed at SOR 1.a, 1.b, and 1.i. (Item 4, dated August 24, 2015) Applicant admitted to the OPM security Investigator that at one time he owed an unknown amount in back child support. However, he is now current with his child support responsibilities. He attributes his delinquent debts to 15 months of unemployment. He characterizes his financial status to the investigator as poor but he was attempting to catch-up with his debts. (Item 3, PSI, dated September 11, 2014 at 5)

In his response to the SOR, Applicant again attributed his delinquent debts to being unemployed from April 2012 until August 2014 while trying to maintain his house, vehicles, and necessities. He reported that since gaining employment, he had been working with debt counselors to slowly resolve his debts. He reported that some SOR debts were resolved. He provided documents to establish that the state tax liens at SOR 1.a and 1.i were released, and the state tax lien at SOR 1.b discharged. He stated he had no knowledge of other debts, or he was working to resolve the debts. He was hoping to have a better financial status by the end of 2016. (Item 1, Response to SOR, dated October 13, 2015)

Applicant, in the interview with the OPM security investigator, reported that he did not know and had no information about the debts at SOR 1.c, 1.d, 1.k, and 1.l. He did not provide any documentation concerning actions he has taken to learn about or resolve these debts. The debts at SOR 1.e are student loans Applicant took out to finance his graduate education. He considers the debts to be a low priority and he has not taken any action to pay or resolve them. The debts at SOR 1.f and 1.g are the same debt for a repossessed car. He tried to arrange a payment plan with the creditor to no avail. He has not made any payments on the debt. Since the debts are duplicates, the debt at SOR 1.g is resolved for Applicant.

The debts at SOR 1.j and 1.o are duplicates for a repossessed car. No documents were presented to establish any payments made on the debt. The debt at SOR 1.o is resolved for Applicant because it is a duplicate debt. Applicant believes that he paid in full the home improvement store debt at SOR 1.n. However, he did not present any documents to establish the debt has been paid or resolved. Applicant had no knowledge of the telephone debt at SOR 1.p. He believes it may be for his son's telephone account. Applicant presented no information or documents to establish his efforts to verify that it is not his account.

The debt at SOR 1.m was Applicant's original home mortgage. Applicant refinanced the mortgage and took out the mortgage listed at SOR 1.h. The mortgage at SOR 1.m was paid when it was refinanced. The debt is resolved for Applicant. Applicant told the security investigator that he was making payments on the refinanced mortgage, but he provided no documents to verify the payments. Applicant is also attempting to reach a payment plan with the creditor but provided no documents concerning his efforts.

The Department Counsel pointed out in the FORM that Applicant provided only limited documentation showing an improving financial status. Department Counsel emphasized that Applicant should provide documentation to establish that he has resolved a substantial portion of his delinquent debts. Since Applicant did not respond to the FORM, he provided no additional documentation concerning his financial status in spite of the suggestion from Department Counsel.

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) This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person 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 testimony 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 5 and 6. 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. Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. Applicant had a long period of unemployment that was a condition beyond his control. However, he has not acted responsibly. He was aware that his financial problems were a security concern when he submitted his security clearance application in July 2014. He has been gainfully employed since he submitted his application. However, he has only paid a limited number of his delinquent debts, namely, the tax liens. He did not present other information to verify actions taken to learn about and resolve his delinquent debts. The evidence does not support responsible management of his finances, and his financial problems are not under control. Based on Applicant's failure to verify his debts and make 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 may not protect and safeguard classified information.

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. I considered Applicant's 20 years of service in the Air Force Reserve and his honorable discharge. Applicant did not provide sufficient credible documentary information to establish that he paid or is paying his delinquent debts. He only verified payment of three of the debts. He did not establish that he has taken reasonable and responsible action to resolve his remaining 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.b:	For Applicant
Subparagraphs 1.c – 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant

Subparagraphs 1.j- 1.l;	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 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