



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



In the matter of:)
)
) ISCR Case: 15-01451
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel
For Applicant: *Pro se*

August 26, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be delinquent on nine debts in the total amount of \$99,535. He failed to resolve any of them. He did not meet his burden to establish mitigation. Eligibility for access to classified information is denied.

Statement of the Case

On November 13, 2015, the Department of Defense 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 September 1, 2006.

Applicant answered the SOR on December 1, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on March 15, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing

on March 16, 2016, scheduling the hearing for May 17, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified. DOHA received the transcript of the hearing (Tr.) on June 2, 2016. The record was left open for Applicant to submit additional exhibits. Applicant presented additional exhibits on May 23, 2016, marked AE A through AE D. Department Counsel had no objections to AE A through AE D, and they were admitted. The record then closed.

Findings of Fact

Applicant is 55 years old. He has worked for a government contractor since 2012. He served in the Navy for 20 years and retired at paygrade E-4. He is married and has four adult children and three adult stepchildren. (Tr. 18, 38.)

The SOR alleged Applicant was delinquent in repaying nine debts, in the total amount of \$99,535. In his Answer, Applicant admitted SOR ¶ 1.f. He denied SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.g, 1.h, and 1.i. His debts are documented in the record credit reports dated October 3, 2012; January 28, 2015; and January 19, 2016. (GEs 2 through 4.) After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant attributes his delinquent accounts to his 2007 move. He transferred his job from one state to another state with a higher cost of living. Three months after the transfer, his company shut down the branch in which he worked. He also listed unemployment from September 2011 to January 2012. (GE 1; Tr. 17-20.)

Applicant is indebted on a delinquent second mortgage in the amount of \$79,566, as alleged in SOR ¶ 1.a. This debt has been delinquent since at least 2014. Applicant purchased a house for approximately \$524,000 in 2007 and financed the purchase with two loans. At the time Applicant purchased the home, the monthly payments were \$1,000 more than he could afford to pay. He believed his family would help him pay the difference. They did not. He is current with his payments on his first mortgage, but is not paying on the second mortgage. In his post-hearing documentation, Applicant submitted a letter addressed to each of the credit reporting agencies, disputing this debt because he believed it to be "over seven years." This debt is not resolved. (GE 3; AE B; Tr. 22-25, 42-44.)

Applicant is indebted on a mortgage loan in the amount of \$1,847, as alleged in SOR ¶ 1.b. This debt has been delinquent since 2009. Applicant testified this debt represents the amount that was past due on a total mortgage of approximately \$43,000. Applicant testified that the property securing this loan was foreclosed upon. He admitted he owes this lender approximately \$43,000. He has not had contact with this lender. Applicant denied this debt because it "exceeded the statute of limitations" for collection. In his post-hearing documentation, Applicant submitted a letter addressed to each of the

credit reporting agencies, disputing this debt because he believed it to be “over seven years.” This debt is not resolved. (GE 3; GE 4; AE B; AE D; Tr. 39-42.)

Applicant is indebted on a charged-off debt in the amount of \$5,251, as alleged in SOR ¶ 1.c. This debt has been delinquent since 2008. Applicant disputed this debt with the credit reporting bureaus and it is no longer being reported on his credit file, according to a letter from Equifax. However, the absence of an entry on his credit report does not mean Applicant resolve this debt. It is unresolved. (GE 3; AE D.)

Applicant is indebted on a collection account in the amount of \$4,964, as alleged in SOR ¶ 1.d. This debt has been delinquent since 2009. This debt is not resolved. (GE 2; GE 3;

Applicant is indebted on a collection account in the amount of \$4,243, as alleged in SOR ¶ 1.e. This debt has been delinquent since 2012. This debt is not resolved. (GE 2; GE 3.)

Applicant is indebted on a delinquent cell phone account in the amount of \$1,758, as alleged in SOR ¶ 1.f. This debt has been delinquent since 2014. This debt is not resolved. (GE 3; Tr. 37-38.)

Applicant is indebted on a collection account in the amount of \$1,642, as alleged in SOR ¶ 1.g. This debt has been delinquent since 2009. This debt is not resolved. (GE 2; GE 3.)

Applicant is indebted on a collection account in the amount of \$886, as alleged in SOR ¶ 1.h. This debt has been delinquent since at least 2012. Applicant’s May 2016 credit report, AE D, reflected a delinquent balance of \$877 with a note that “customer disputes after resolution.” Applicant testified he was attempting to reach a payment agreement with this creditor. This debt is unresolved. (GE 2; GE 4; AE D; Tr. 37.)

Applicant is indebted on a collection account in the amount of \$412, as alleged in SOR ¶ 1.i. This debt has been delinquent since 2012. This debt is not resolved. (GE 2; Tr. 31-32.)

Applicant has not paid any of the debts alleged in the SOR. (Tr. 27.) His budget reflects that he spends more than his income each month. (AE C.) He testified that he has sought financial counseling, which encouraged him to dispute his old debts based on the statute of limitations. (Tr. 17-18, 27-28, 34-36.)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying conditions and mitigating conditions, 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. 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.

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 was alleged to be delinquent on nine debts in the total amount of \$99,535. Many of those accounts have been delinquent for more than seven years. He failed to establish that he has resolved any of them, and his budget reflected insufficient income to permit him to do so if he so desired. The evidence raises security concerns under the above 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 financial problems are recent. He has documented few actions on his delinquencies, other than to contest some debts for exceeding the statute of limitations. His testimony shows that he has not prioritized repaying his delinquent debt, and he has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant blamed his financial problems on unemployment and buying a home he could not afford. Unemployment is, in part, a situation which was beyond Applicant's control. However, he did control his decision to purchase a home he could not afford. Further, he did not address his debts in a responsible or timely manner. Mitigation under AG ¶ 20(b) has not been fully established.

Applicant testified he participated in financial counseling. However, there are no clear indications that his financial problems are being resolved or are under control. His financial counseling only resulted in him contesting some debts due to their age. Further, he produced no documentation to establish a good-faith effort to resolve his debts. Mitigation under AG ¶¶ 20(c) and 20(d) has not been established.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. Applicant has not provided any evidence of any formal dispute or a basis for one. While he contested several of his debts with the credit bureaus due to their age, he largely admitted owing the underlying debts. Simply filing a dispute with a credit reporting agency does not provide evidence of mitigation under AG ¶ 20(e) where Applicant admits to the underlying financial obligation, without a more concrete reason for a dispute. Mitigation under AG ¶ 20(e) has not been fully established.

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.

According to 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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant has been a dedicated employee since 2012. He served honorably in the Navy for 20 years. However, he is a mature adult and responsible for his choices and financial obligations. His financial decisions reflect that he lacks the responsibility, judgment, and trustworthiness required to hold a security clearance. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a:	Against Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraphs 1.d:	Against Applicant
Subparagraphs 1.e:	Against Applicant
Subparagraphs 1.f:	Against Applicant
Subparagraphs 1.g:	Against Applicant
Subparagraphs 1.h:	Against Applicant
Subparagraphs 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge