



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 15-01579
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

01/30/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 27, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on February 19, 2016, and he elected to have the case decided on the written record in lieu of a hearing. On March 15, 2016, the Government submitted its file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on March 23, 2016. Applicant was afforded an opportunity to respond to the FORM within 30 days of its receipt and to file

objections and submit material to refute, extenuate, or mitigate the security concerns. He did not provide any response. The case was assigned to me on December 15, 2016.

Procedural Issues

In the FORM, Department Counsel references FORM Items 1-5. FORM Item 3 consists of three unauthenticated summaries of interviews with a government background investigator conducted in October 2012. In the FORM, Department Counsel advised Applicant that he could object to FORM Item 3 and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be constituted as a waiver, and the evidence would be considered by me. Applicant failed to respond to the FORM, and he raised no objections. Given Department Counsel's advisement and Applicant's education and work experience, I found the waiver to be knowing and intelligent.¹ Therefore, I admitted FORM Item 3 into evidence as Government Exhibit 3.

FORM Items 2, 4, and 5, are also admitted into evidence as Government Exhibits 2, 4, and 5, without objection.²

Findings of Fact

The SOR alleges two delinquent credit card accounts totaling approximately \$21,678. Applicant denied both allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 60 years old. He received an associate's degree from a technical/trade school in March 1979. He attended some undergraduate classes in 2008-09. Applicant has been married since October 1984, and he has two adult stepchildren.³

Applicant had two extended periods of unemployment in the last decade. From June to November 2006, he was employed full time. He was unemployed from November 2006 to April 2007. From April 2007 to July 2010, he was gainfully employed full time,⁴ with a monthly net income of approximately \$2,700. He was unexpectedly laid off in July 2010, and he remained unemployed until June 2012. Since July 2012, he has been employed full time by a DOD contractor. As of his October 2012 interviews,

¹ See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016)(Applicant's waiver of the authentication element must be knowing and intelligent. The Judge's exclusion of the Report of Interview, containing mitigating evidence, was found to be error following applicant's appeal.).

² See ISCR Case No. 14-06781 at 3 (App. Bd. Dec. 16, 2016)(By not responding to the Government's FORM, "Applicant waived any objection he might have had to this document.").

³ Item 2.

⁴ Item 2.

Applicant's monthly net income was approximately \$2,900. His wife's net monthly income was approximately \$3,675. After deduction of their monthly expenses (\$2,955), their estimated net monthly remainder was approximately \$3,620.⁵

The account in SOR ¶ 1.a. was opened in October 2007, and the last payment was in about May 2009. This account was later charged off in the approximate amount of \$13,345.⁶ In his response to the SOR, Applicant admitted that he had defaulted on this account in 2009, and he claimed to have attempted to negotiate payments with the creditor. Applicant further claimed to have signed a letter in 2013 "closing the matter" and that he "understood that [his] credit report would reflect the unpaid debt for seven years and [he] would have to accept the credit report reflecting this debt unpaid in full and sign off."⁷ Applicant provided no documentation to substantiate his claims about the attempted negotiations or the 2013 letter. There is no evidence of any payments on this debt since 2009.

The account in SOR ¶ 1.b. was opened in September 2003, and the last payment was in about September 2009. This account was placed for collection in the approximate amount of \$8,333.⁸ In his response to the SOR, Applicant admitted that he had defaulted on this account in 2008, and he claimed to have settled this account in May 2014; however, he provided no documentation to substantiate his claims of settlement.

In October 2012, Applicant was interviewed three times by a government investigator about the two delinquent debts. He provided conflicting information about which creditor filed a lawsuit against him, and he provided no documentation as to how the suit was resolved.⁹

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.

⁵ Item 3.

⁶ Items 4 and 5.

⁷ Applicant's response to SOR (FORM Item 1).

⁸ Item 4.

⁹ Item 3 (During the first and third interviews, he stated that the lawsuit concerned the debt alleged in SOR ¶ 1.b. During the second interview, he stated that the lawsuit concerned the debt alleged in SOR ¶ 1.a., and he provided the account number linked to this creditor.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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. As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."¹⁰ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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.

Section 7 of EO 10865 provides that adverse 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 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

¹⁰ *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988). See *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

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.¹¹

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

The two alleged debts, which became delinquent in mid-2009, total approximately \$21,678. Thus, the evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

The Government established its case for disqualification. Accordingly, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.¹² An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹³ Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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;

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

¹² Directive ¶ E3.1.15.

¹³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

(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.

There is no documentary evidence to establish that these debts have been resolved or that Applicant took steps to resolve or repay them. Therefore, I cannot find that these issues are unlikely to recur and doubts remain as to Applicant's reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

The application of AG ¶ 20(b) requires both (1) Applicant's financial indebtedness resulted from circumstances beyond his control and (2) Applicant acted responsibly under the circumstances.¹⁴ Both debts became delinquent while both Applicant and his wife were gainfully employed in 2009. Applicant failed to provide evidence that his failure to pay his debts resulted from circumstances beyond his control. Nonetheless, I have considered that Applicant's 2010 layoff and his subsequent period of unemployment may have impacted his ability to pay these debts and have determined that they may constitute circumstances beyond one's control in the context of AG ¶ 20(b).

AG ¶ 20(b) also requires that an applicant act responsibly under the circumstances. The second prong of AG ¶ 20(b) does not require an applicant to be debt-free or to develop a plan for paying off all debts immediately or simultaneously.¹⁵ In this case, there is insufficient evidence to conclude that Applicant acted responsibly to address his delinquent debts or to develop and implement a reasonable debt repayment plan. Applicant provided no documentation to substantiate his claims as to any negotiations with creditors, settlement payment as to SOR ¶ 1.b., or to explain why he is not liable as to SOR ¶ 1.a. Finally, in light of Applicant's net monthly remainder (as of October 2012) in the approximate amount of \$3,600, Applicant has failed to explain why he did not take steps to resolve the both delinquent debts at that time. Because Applicant did not provide documentary evidence of a plan to resolve his delinquent debts or of any steps taken in furtherance of a debt resolution plan, I conclude that AG ¶ 20(b) does not apply.

¹⁴ See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

¹⁵ ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) ("All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan.").

There is no record evidence of financial counseling. AG ¶ 20(c) does not apply.

Applicant claimed to have made payments on SOR ¶ 1.b., but he provided no documentation in support of this claim. Applicant has not met his burdens of production or persuasion to show good-faith efforts to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) does not apply.

Applicant admitted that he defaulted on this credit card debt in SOR ¶ 1.a. and that its delinquency will be reflected on his credit report for seven years, yet he denied this debt. To the extent he disputes this debt, he has not provided the requisite documentation to establish a reasonable basis for his dispute. AG ¶ 20(e) does not apply.

Absent documentary evidence of debt repayment or resolution and financial responsibility, particularly in light of Applicant's net monthly remainder, I find that financial considerations concerns remain.

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.

In light of all of the facts, I considered the potentially disqualifying and mitigating conditions. I have incorporated my comments under Guideline F and the factors in AG ¶ 2(c) in this whole-person analysis.

Applicant was provided an opportunity in his SOR response and in response to the Government's FORM to show what steps he has taken to resolve these delinquencies, and to provide documentation. He was aware that the two alleged delinquent credit card debts were a security concern, and he failed to provide documentary evidence of his efforts to resolve these debts. Although Applicant's unemployment contributed to his financial delinquencies, he failed to explain his failure

to develop and implement a debt repayment plan in light of his significant net monthly remainder. Applicant has not met his burden of persuasion. The totality of the record evidence leaves me with doubts as to Applicant's suitability for a security clearance. I conclude Applicant did not 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
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Subparagraphs 1.a.-1.b.:	Against Applicant
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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.

Eric H. Borgstrom
Administrative Judge