



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 15-01589

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel

For Applicant: *Pro se*

01/31/2017

Decision

HOWE, Philip S., Administrative Judge:

On February 14, 2013, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On September 24, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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 within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on October 12, 2015. He answered the SOR in writing on November 3, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 2, 2016, and I received the case assignment on March 21, 2016. DOHA issued a Notice of Hearing on August 4, 2016, and I convened the hearing as scheduled on August 23,

2016. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified and had no exhibits to submit. DOHA received the transcript of the hearing (Tr.) on August 31, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

The SOR alleges in Subparagraph 2.a that Applicant failed to disclose on his e-QIP the debts in Subparagraphs 1.a through 1.f; 1.h through 1.p; 1.r; 1.t through 1.ee; 1.gg; 1.ii through 1.h.h.h; 1.j.j.j through 1.m.m.m; and 1.s.s.s through 1.j.j.j.j.. However, SOR Paragraph 1 ends with an allegation in Subparagraph 1.h.h.h.h. Therefore, no findings are made on alleged falsification of the debts identified in Subparagraphs 1.i.i.i.i. and 1.j.j.j.j in Subparagraph 2.a.

Furthermore, Subparagraph 2.a. alleges Applicant did not disclose his debts in Section 26 of his e-QIP. This statement assumes he made 10 disclosures of delinquent debts. However, an examination of Section 26 of the e-QIP does not disclose any admissions of any delinquent debts anywhere in the document. Therefore, the Subparagraph 2.a. allegation should read as follows, starting on the fourth line from the bottom of the allegation: “whereas in truth, you deliberately failed to disclose that information as set forth in subparagraphs 1.a to 1.j.j.j.j.” and striking the previous language of the allegation. These changes are made to reflect the information in the e-QIP upon my action pursuant to Enclosure 3 of the Directive, Paragraph E3.1.17.

Findings of Fact

In his Answer to the SOR Applicant admitted the financial allegations in Paragraph 1. He denied the falsification issues in Paragraph 2. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 29 years old. He has an adopted teenage child and is not married. His girlfriend has three children. He works for a security company as a guard at a defense contractor. He has had several jobs since his 18th birthday. His 2013 investigative background report shows he quits his jobs because of conflicts with his supervisors, often not giving the standard two weeks of notice. (Tr. 19, 21, 22; Exhibit 1)

Applicant has 86 delinquent debts listed in the SOR in Paragraph 1. They total \$48,893. Four debts are non-medical debts, two being owed to a credit union for auto loans since 2008, and two being for cellular telephone service. The remaining 82 delinquent debts are medical debts incurred from at least 2010 when Applicant went to hospital emergency rooms for treatment of any health problem because he did not have a primary care physician or medical insurance. Applicant admits these debts and that they pertain only to his medical treatment. He has not resolved any of the delinquent debts. (Tr. 24, 29-47; Exhibits 1-6)

Applicant has not contacted any creditor in several years. He admitted he has a tendency to forget to pay debts. His girlfriend takes care of the household money. He does not answer the telephone if he does not recognize the calling number, so he has not had contact with any debt collector. He does not budget his income and has no savings account. He has not had any financial counseling. (Tr. 23, 24, 29-47; Exhibits 1-6)

Applicant testified he did not mean to answer the e-QIP Section 26 questions about his debts untruthfully. He stated he was unaware of any debts when he entered his answers on the e-QIP. To the government investigator a month later after submitting his e-QIP Applicant admitted he knew he owed money because he had a repossessed automobile and a garnishment of his salary in 2011. Applicant signed the e-QIP, attesting to the truth and completeness of his answers. He denied on the e-QIP having any delinquent debts. Applicant claims someone in his company may have changed his answers. Applicant stated it took almost a year to submit his e-QIP and it was intimidating for him. (Tr. 49-52; Exhibit 1)

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 are useful 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 (AG ¶ 2(a)). 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. Likewise, 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, an "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."

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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

Applicant accumulated \$48,893 in delinquent debt from 2008 to the present time that remains unpaid. Applicant has 86 delinquent debts listed in the SOR. The evidence raises all of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. No conditions apply:

(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;

(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; and,

(f) the affluence resulted from a legal source of income.

Applicant is not paying his debts. He has not taken any action to attempt to resolve any of the debts. He repeatedly incurred medical debts and not paid any of the 82 medical financial obligations. His actions are current and not beyond his control. He has no basis to dispute the debts. There is no affluence from any source involved with Applicant.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant knew he had unpaid auto loans and medical debts for treatments he received at hospital emergency rooms when he completed his e-QIP in February 2013. He deliberately failed to disclose them in answering the questions in Section 26 of the e-QIP. This disqualifying condition is established.

AG ¶ 17 provides conditions that could mitigate security concerns:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and,
- (g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

All the information he should have divulged about his 86 delinquent debts were known to Applicant when he answered the e-QIP. He tries to claim someone else changed his answers in Section 26, but does not have any evidence as to who might have done it. He has not produced any document showing his answers were truthful before he signed the e-QIP. Applicant deliberately failed to disclose his 86 delinquent debts when he signed the e-QIP.

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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant voluntarily sought treatment for medical conditions knowing he did not have medical insurance or the financial means with which to pay for such treatment. He has not changed his behavior over the term of 82 medical debts. He falsified his information given to the government about these finances, making him vulnerable to pressure, coercion, exploitation, or duress. His testimony about not having medical insurance or any savings shows his behavior will continue. He incurs debts and then reneges on paying them.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations and personal conduct.

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 to 1.h.h.h.h.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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.

PHILIP S. HOWE
Administrative Judge