



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



In the matter of:

ISCR Case No. 15-01956

Applicant for Security Clearance

Appearances

For Government: Bryan Olmos, Esq., Department Counsel

For Applicant: *Pro se*

August 12, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is alleged to be delinquent on 15 debts, in a total exceeding \$17,400. Applicant failed to introduce documentation to show any of his delinquencies have been resolved. Eligibility for access to classified information is denied.

Statement of the Case

On May 1, 2013, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On November 5, 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.

On December 4, 2015, Applicant answered the SOR (Answer), and elected to have the case decided on the written record in lieu of a hearing. Department Counsel

submitted the Government's written case on January 4, 2016. The Government's submission included Government Items (GE) 1 through 7. A complete copy of the file of relevant material (FORM) was received by Applicant on January 27, 2016. He was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant's response to the FORM, and any objections to GE 1 through GE 7, were due on February 26, 2016. Applicant failed to submit anything by that date. As a result GE 1 through GE 3 and GE 5 through GE 7 are admitted into the record without objection.¹ The case was assigned to me on May 11, 2016.

Findings of Fact

Applicant is 53 years old. He has been employed by his current employer, a defense contractor, since March 2013. Applicant is divorced since 2004. He has two children. Applicant served on active duty in the Navy from 1997 to 2008. He achieved the rate of E-5. (GE 3.)

As listed in the SOR, Applicant was alleged to be delinquent on 15 debts in a total exceeding \$17,400.² Applicant admitted all of the debts alleged in SOR. His debts are identified in the credit reports entered into evidence. (Answer; GE 5; GE 6; GE 7.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant's debts consist of: a collection account in the amount of \$11,858 (SOR ¶ 1.a); a collection account in the amount of \$867 (SOR ¶ 1.b); a medical debt in the amount of \$603 (SOR ¶ 1.c); a delinquent educational loan in the amount of \$459 (SOR ¶ 1.d); a collection account in the amount of \$365 (SOR ¶ 1.e); a delinquent educational loan in the amount of \$435 (SOR ¶ 1.f); a charged-off account in the amount of \$356 (SOR ¶ 1.g); a delinquent cable bill in the amount of \$300 (SOR ¶ 1.h); another delinquent cable account in the amount of \$166 (SOR ¶ 1.i); a charged-off account in an unstated amount (SOR ¶ 1.k); a charged-off vehicle loan in an unstated amount (SOR ¶ 1.l); a debt to a state in the amount of \$900 (SOR ¶ 1.m); a collection account in the amount of \$379 (SOR ¶ 1.n); a medical collections account in the amount of \$603 (SOR ¶ 1.o); and a collection account in the amount of \$139 (SOR ¶ 1.p). All of these SOR-listed debts remain delinquent.

Applicant has not provided evidence of actions taken to address any of his SOR-listed debts. He provided no household budget showing monthly household expenses. He did not provide a copy of his earnings statement. Without this or similar information, I am unable to assess his current financial status and his ability or willingness to repay his past-due debts. The record lacks any evidence of credit or financial counseling.

¹GE 4 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management in July 2014. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness.

² The SOR allegations do not contain a ¶ 1.j.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. 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, administrative judges apply the guidelines 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(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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 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, as follows:

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 has a history of financial indebtedness documented by the credit reports in evidence, which substantiate all of the allegations. He has been unable or unwilling to address his delinquencies. The evidence raises security concerns under both of these disqualifying 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 ongoing. All of Applicant's 15 delinquent accounts remain unresolved. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant provided no explanation for his financial delinquencies. Further, he failed to establish that he has acted responsibly or responsibly. He has not demonstrated that he addressed his debts in a timely manner. Mitigation under AG ¶ 20(b) has not been established.

Applicant provided no evidence of financial counseling. Further, there are no clear indications that his financial problems are being resolved or are under control. Mitigation under AG ¶ 20(c) has not been established.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of any dispute or provide evidence of actions to resolve the issue. Applicant has not provided evidence of any formal dispute or a basis for one. Mitigation under AG ¶ 20(e) has not been 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.

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 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's

financial problems remain unresolved. In addition, he is a mature adult and as a former military member, should be aware that his personal finances are of concern to the Government. While he was given the opportunity to document the status of his debts, he failed to produce evidence of any actions on his 15 delinquent accounts. 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 through 1.i:	Against Applicant
Subparagraphs 1.k through 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 a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge