



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



In the matter of:

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ISCR Case No. 15-01975

Applicant for Security Clearance

Appearances

For Government: Rhett Petcher, Department Counsel

For Applicant: *Pro se*

09/28/2016

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct). The SOR was dated September 25, 2015. 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) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on March 3, 2016. A notice of hearing was issued scheduling the hearing for June 3, 2016. The case was postponed

for good cause¹ and rescheduled for August 30, 2016. Government Exhibits (GX 1-8) were admitted into the record. Applicant testified. He did not present witnesses or exhibits. At his request, I kept the record open until September 15, 2016. Applicant submitted Applicant Exhibits (AX A-C) The transcript was received on September 7, 2016. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct).

Applicant is a 42-year-old test engineer for a defense contractor. He received his undergraduate degree in 1996 and is currently attending graduate school. He is divorced and remarried, with two children and two step-children. Applicant has worked for his current employer since 2008. He has held a security clearance since 1998. (GX 1)

Financial Considerations

The SOR alleges nine delinquent debts totaling about \$13,206. (GX 5) Applicant admits responsibility for the debts, and states that he intended to settle the debts but did not have the money to do so. In his answer to the SOR, he also claimed he was not aware of some of the debts.

The debts alleged in the SOR are either collection accounts or charged-off accounts. Applicant did not present documentation of payments or a payment plan for any of the delinquent debts. His post-hearing submission noted that he has contacted Lexington Law Firm. He noted that the judge could verify that information by calling the firm. (AX A)

As to SOR 1.a for \$2,619, he claimed that he tried to settle the credit card account that was charged off, but the company wanted the full amount. He has not contacted them since 2008. As to SOR 1.b, for a charged-off phone account in the amount of \$56, Applicant stated that he would pay the bill as soon as possible, but he has not produced any documentation to support his claim. As to SOR 1.c for \$1,021, he stated that he really owes about \$600. It was a credit card and the rest is for interest and penalty. It is still unpaid. (Tr. 31). As to 1.d for \$130 for a cable bill, but he has not resolved the bill. (Tr. 32) As to 1.e for \$6,917 for rent that was not paid, Applicant stated that he attempted to settle the debt, but did not have the funds to do so. His plan is to use the Lexington Law firm to help him with this issue. As to 1.f, for a collection account in the amount of \$888, for a gas bill, Applicant thought his first wife would pay the bill. It is still unpaid. (Tr. 37) As for the debt in 1.g for a vehicle repossession, he co-signed a car note and his wife did not make payments. He believes he owes about \$6,000. He

¹Applicant stated that he was not prepared to go ahead with his case and wanted to seek counsel.

has not recently contacted the company. (Tr. 38) As to the debt in 1.h for \$1,491 for a collection account to a cable company, Applicant stated that he paid the account, but he could not find the receipt. In his post-hearing submission, he provided the telephone number of the company to verify payment. (AX A) As to 1.I for \$84 for a medical account, he could not find a receipt that it was paid. He stated that his first wife has agreed to pay the bill. He provided a phone number for verification. (AX A)

Applicant testified that some of the financial difficulty began when his first spouse lost her job and was injured and she lost her employment in about 2009. Due to a medical condition, she has not been able to work. (Tr. 13) He further noted that she had some debts before they were married that he became responsible for. His current wife has medical issues which do not allow her to work all the time. (Tr. 25)

Applicant's annual salary is \$99,000. His current wife just started working as a cashier. He has a budget that he submitted as a post-hearing document. (AX B) He is current with his daily bills. He has a net monthly remainder of about \$600 to \$700 a month. (AX C) His child support obligation will end soon and leave him with more discretionary money. He also helps pay his daughter's college tuition.

Applicant submitted a character reference from his supervisor who has known him since 2008. He praises Applicant for his dedication, technical skills, leadership and his commitment. He works multiple projects at a time and works until the project is completed. He is respected by his peers. Applicant is described as a dedicated and trustworthy employee. He has worked on high profile programs. His supervisor stated that he is talented, dependable and highly recommends him. (AX B)

Criminal Conduct

Applicant was arrested in September 2009 and charged with driving under the influence (DUI). He was found guilty and sentenced to probation before judgment. He was at a birthday celebration and had beer and two shots. He realized he made a poor decision. He was pulled over by the police for speeding. (GX 2) Applicant attended counseling for a few weeks, went to MADD meetings and a MADD seminar. (Tr. 56)

In April 2011, Applicant was arrested and charged with driving under the influence (DUI). He was found guilty and sentenced to 18 months of probation and 26 weeks of alcohol counseling. He also had an interlock device placed on his vehicle. (GX 2) Applicant admits that he was drinking beer and shots and was drinking more than usual because he was depressed. His mother had died recently. Applicant stated that he had a designated driver with him, but when it was time to leave, he could not find him. He tried to call a cab, but a cab did not arrive. Applicant decided to sit for a while and drink water. He then decided to drive to his brother's house. However, he turned the wrong way on a one way street. He realized it was bad judgment on his part. He does not drink heavily anymore. He drinks a beer occasionally, but he avoids "hard liquor." (Tr. 61) He realizes the importance of not drinking and driving. He talked to his two daughters who were very worried about him. He does not want to let them down.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ."² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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."⁵ "The clearly consistent standard indicates that security clearance

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to 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, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admits to nine delinquent debts that are listed in the SOR. The Government produced credible evidence to establish the debts. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns:

(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 has not resolved any of the debts. He provided no documentary evidence that any are paid or in a payment plan. He obtained the services of Lexington Law recently to help him. He stated that the financial concerns arose due to the loss of income from his first wife. He also noted that his second wife has a medical condition. However, he has been employed since 2008. He provided no documentation that he has paid even the smallest amount. He was given time to submit documentation, but he sent a narrative that provided phone numbers for two debts that he claims are paid. He does not have a plan in place. He contacted some creditors years ago, but he has not followed up with them. He has not acted responsibly under the circumstances. None of the mitigating conditions apply.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations."

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying:

- (a) a single serious crime or multiple lesser offenses;
- (b) discharge or dismissal from the Armed Forces under dishonorable conditions;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;
- (d) individual is currently on parole or probation; and
- (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant's admissions as to the two DUI's in 2009 and 2011 is sufficient to raise AG ¶¶ 31(a) and (c).

AG ¶ 32 provides conditions that could mitigate security concerns:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, remorse or

restitution, job training or higher education, good employment record, or constructive community involvement;

Applicant has not had any other incidents of DUI's or criminal occurrences. He acknowledged his poor judgment and has shown remorse. He has been employed since 2008 and has received praise for his accomplishments. He understands the gravity of the situation. He completed alcohol counseling and attended MADD meetings. He receives mitigation under ¶ 32 (d).

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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is an educated man and has many work accomplishments. He presented a letter of recommendation from his current employer. He is divorced and remarried with two children and two step-children. He began having financial difficulties when his first wife lost her employment. He could not maintain the debts. He remarried and his current wife has medical issues. She recently started work as a cashier. He fell behind due to one income. He provided for his family. However, he has been gainfully employed since 2008 and he has not resolved the delinquent debts. He intends to pay his debts and has contacted the Lexington Law Firm. However, he has no record of any payments or payment plan. He has not mitigated the financial considerations security concern.

Applicant has two DUI's. He acknowledges his mistakes. He has attended alcohol counseling and attending MADD meetings. His last DUI was in 2011. He completed

probation. He has no other criminal incidents. He has mitigated the security concerns under the criminal conduct guideline.

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.i:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For 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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge