



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02413

Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel
For Applicant: *Pro se*

10/14/2016

Decision

HOWE, Philip S., Administrative Judge:

On August 12, 2014, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). On October 19, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. 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 answered the SOR in writing on November 17, 2015. Applicant requested his case be decided on the written record in lieu of a hearing.

On February 9, 2016, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 6,

was provided to the Applicant on February 10, 2016. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on February 18, 2016.

Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on March 19, 2016.

Department Counsel submitted six Items in support of the SOR allegations. Item 6 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 on October 22, 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. In light of Applicant's admissions, it is also cumulative.

I received the case assignment on September 9, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant denied the allegations in Subparagraphs 1.a, 1.h, 1.j, 1.k, 1.n, 1.o, 1.r, 1.s, and both allegations in Paragraph 2. He admitted all other allegations in Paragraph 1. (Items 2-6)

Applicant is 39 years old and never has married. He works for a defense contractor. (Item 3)

The SOR has 19 allegations of delinquent debts totaling \$62,244. There are five student loans listed totaling \$27,363. Other delinquent debts are: 11 credit cards or loans totaling \$34,374; and three other debts of \$169 each, which total \$507, owed for telephone company fees and shown by different account numbers. Applicant claims he is current on his student loans, some loans are duplicates such as the three telephone changes, and he is paying other loans. He does not submit documentary proof of any resolution of any of the listed 19 debts. He refers to "snippets" of credit reports to show his current debt status. (SOR; Answer)

Applicant's five SOR-listed student loans started in 1999 (Subparagraphs 1.a, 1.j, 1.k, 1.n, and 1.o). His Answer asserts his student loans are current. Applicant also submitted excerpts from credit reports dated September 30, 2015, showing his seven student loans are "open and current." However, no account numbers or amounts are listed for the debts. Applicant did not explain the difference in the number of student loans in any document. None are resolved. (Answer; Items 4, 5)

The SOR lists three telephone debts for \$169 (Subparagraphs 1.f, 1.r, and 1.s). There is one debt in this amount shown on the February 20, 2015 credit report and then

listed twice on the August 29, 2014 credit report (pages 13 and 14) with different account numbers being collected by two different collection agencies but owed to the same telephone company. They are the same debt based on the delinquency dates listed in the credit reports. They are duplicates listed in the SOR. The “snippet” of the credit report submitted by Applicant from two credit reporting agencies dated November 13, 2015, shows one \$169 debt was a paid collection. This one \$169 debt is resolved. (Answer; Items 4, 5 at pages 13 and 14)

The SOR lists 11 other delinquent debts that originated between 1999 and 2015. Applicant’s Answer states he recognized his mistake after “working with a field officer.” He does not disclose whom he means by that designation. He also claims several of his debts are duplicates of others listed in the SOR but does not submit any documents to demonstrate the validity of his assertion (Subparagraphs 1.e, 1.l, and 1.m). His credit reports also each show a credit card debt owed to a bank as listed in Subparagraph 1.c in the amount of \$2,378. The account was opened in 2001. Applicant states he is current on paying this account without submitting any objective evidence concerning its status. He also claims two debts were dropped from his credit report (Subparagraphs 1.g. and 1.i). He did not explain if they were paid or merely old enough to be dropped by the credit reporting agencies. (Answer; Items 4, 5)

Applicant did not file a response to the FORM. Therefore, the status of his delinquent debts between at least November 17, 2015, when he answered the SOR and February 18, 2016, when he received the FORM is not known. He did not submit any documents showing when he paid on any debts (other than one telephone debt) or the amount of money paid on each debt. He merely submitted a statement that he was paying his debts. It is not persuasive without payment information. (Item 1)

Applicant deliberately failed to disclose a judgment against him by Citibank and whether he was currently delinquent on any federal debt (Subparagraph 2.a). Applicant answered “yes” to the e-QIP Section 26 question and disclosed a judgment owed to “Discover bank” that he claimed he paid, but failed to disclose the judgment against him by Citibank (Subparagraph 1.h) for \$4,612 or any of his delinquent federal student loans (listed in Subparagraph 1.a, 1.j, 1.k, 1.n, and 1.o). Applicant claimed he made an honest mistake by listing a judgment owed to “Discover bank” and not the Citibank judgment listed in the credit reports. His only e-QIP explanation for the “Discover” judgment was that he “fell behind due to financial set back/overextended.” Applicant’s Answer asserts that as of its date his student loans were current. He does not make any declaration about the status of his student loans on the date he signed the e-QIP. On the credit report dated August 29, 2014, 17 days after Applicant completed the e-QIP, the judgment by Citibank is listed. Applicant knew he had that judgment and failed to disclose it. (Items 3, 5)

Applicant deliberately failed to disclose his delinquent debts in response to the e-QIP Section 26 that asked if he had any bills turned over to a collection agency, an account or credit card suspended, charged off, or cancelled for failing to pay, or whether

he was over 120 days delinquent on any debt (Subparagraph 2.b). Applicant answered “no” to all questions regarding his financial delinquencies. All of the delinquent debts listed in the SOR are also set forth in the two credit reports in the file. Applicant had many delinquent debts at the time he completed his e-QIP and should have disclosed all of them on his e-QIP. (Item 3-5)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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, the administrative judge applies 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.

According to 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. 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. From these nine conditions, 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.

From 1999 to the present, Applicant accumulated 19 delinquent debts, totaling \$62,244 that remained unpaid or unresolved when the SOR was written. These two disqualifying conditions are established.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. No mitigating condition has any applicability:

- (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's debts remain delinquent. Some were opened in 1999 and their current status remains the same for all but three small \$169 debts owed to a telephone company. They are the same debt but listed three times. There are no unusual circumstances involved in these debts. Their existence casts doubt on Applicant's current reliability, trustworthiness, or good judgment by his failure to show any current resolution of more than three minor debts. AG ¶ 20 (a) is not established.

Applicant's debts were not beyond his control. He incurred them and failed to pay them. He has not acted responsibly in trying to resolve the delinquent debts. AG ¶ 20 (b) is not established.

Applicant has not received any financial counseling and there is no evidence his financial problems are under control or being resolved. AG ¶ 20 (c) is not established.

Applicant has not shown any evidence he has made a good faith effort to resolve his delinquent debts, except for the \$169 debt owed to the telephone company. AG ¶ 20 (d) applies partially.

Appellant has not shown any reasonable basis to dispute the legitimacy of his debts. He did not provide any documents to show the basis of any dispute or that he took any action to resolve the issue. AG ¶ 20 (e) is not established.

Finally, there is no evidence of legal affluence affecting Applicant's ability to pay his delinquent debts. AG ¶ 20 (f) is not relevant.

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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,
- (b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes a condition 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 did not disclose his financial delinquencies as alleged in SOR Paragraph 2. He has 19 delinquent debts and listed only a paid off judgment on a credit card to "Discover bank." He did not disclose his delinquent federal loan debts. He made only one financial delinquency disclosure, while he knew he had other delinquent debts. His e-QIP explanation for the judgment was that he could not pay the debt because of financial overextension. AG ¶ 16 (a) is established.

There are seven mitigating conditions under the Personal Conduct guideline. None of them apply to Applicant.

Applicant did not make prompt efforts to correct his answers in Section 26 of the e-QIP, as required in AG ¶ 17 (a). There is no evidence of improper or inadequate advice from authorized personnel or an attorney, which is required in AG ¶ 17 (b). The

falsification is not minor or unique, it does not have any other qualities set forth in AG ¶ 17 (c). There is no evidence of counseling of any type or acknowledgement of his falsifying behavior, nor any evidence of steps to reduce his vulnerability, so AG ¶ 17 (d) and (e) do not apply. The information is substantiated, so AG ¶ 17 (f) does not apply. There are no criminals involved so AG ¶ 17 (g) does not apply. Therefore, none of the mitigating conditions apply to Applicant's deliberate falsification of his financial history on his 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 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 facts and circumstances surrounding this case. He has not taken any action to resolve his delinquent debts except for the one \$169 debt. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past seven years.

Overall, the record evidence leaves me with questions or substantial 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 under the guidelines for 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.e., 1.g to 1.q:	Against Applicant
Subparagraphs 1.f, 1.r, and 1.s:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	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