



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No.15-02533

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

05/03/2017

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). The SOR was dated October 2, 2015. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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 decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated April 21, 2016.¹ Applicant received the FORM on May 3, 2016. Applicant did not respond to the FORM. The case was assigned to me on March 21,

¹The Government submitted six items for the record.

2017. Based on a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the single allegation listed on the SOR under Guideline F (Financial Considerations). He provided no additional information or explanations. (Item 2)

Applicant is a 27-year-old who is a welder for a defense contractor. He is single and has one minor child. He obtained his GED in 2007 and received a certification degree in welding from a technical institute in 2012. Applicant has worked for his current employer since 2014. He completed a security clearance application in 2014. (Item 3)

Financial Considerations

The SOR alleges a single allegation, specifically that Applicant filed for chapter 7 bankruptcy in October 2014, which was discharged in February 2015. (Item 1) Applicant's liabilities, which were discharged, totaled \$35,000. (Item 6)

Applicant was unemployed from May 2010 to September 2010, while he was incarcerated. He stated that his financial difficulties began in June 2010. He began employment in September 2010 as a full time employee and then part time while he attended school. (Item 4) He worked for various employers in low-paying jobs until he obtained his position with his current employer in 2014.

Applicant disclosed in his 2014 security clearance application and in his investigative interview that his financial difficulties began when he was incarcerated. In his security clearance application, he stated that he intended to use a debt consolidation company to resolve his debts. (GX 1) Also, during his investigative interview, he disclosed his various debts and stated that he would try to file a petition for chapter 7 bankruptcy. He eventually filed for the Chapter 7 in October 2014. When he filed the bankruptcy petition, he listed his income as \$2,357.78. (Item 5)

Applicant's 2014 credit bureau report reflects that he is current on his child support. He had student loans in deferment. (Item 5)

Applicant did not respond to the FORM to explain what if anything he did to resolve any debts until he filed for bankruptcy in 2014. Without such information it is not possible to assess what attempts, if any, Applicant made to resolve any of his delinquent debts before 2014. He started employment in 2010 and after returning to full-time employment in 2010, he could have made some small payments to various accounts. Applicant did not meet his burden of proof in this case. He did not provide information to mitigate the security concerns under the financial considerations guideline.

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 EO 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;

The Government produced credible evidence to establish that Applicant filed for Chapter 7 bankruptcy in October 2014 and the debts were discharged in 2014. Applicant admits the single allegation. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), and 19(c)

AG ¶ 20 provides conditions that could mitigate the security concerns:

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

⁷ *Id.*

(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 has been employed since September 2010, but provided no information that he attempted to resolve his delinquent debt. While he was unemployed, and this exacerbated any financial issues, he waited until 2014 to file for bankruptcy to resolve his financial debts. He told his investigator that he would try to consolidate his debts, but he chose bankruptcy, which is a legal means to resolve debts. He had some circumstances beyond his control, but he has not shown any evidence that he made good faith efforts after returning to work in 2010 to repay his creditors. Thus 20(b) cannot apply as he did not show that he acted responsibly under the circumstances. No other mitigating factors apply in this case.

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 27 years old. He has a minor child who he supports. He has been working since 2010 in various positions. He was unemployed for a period of time, but he has not provided any information that he acted responsibly to resolve some or all of his delinquent debts. He filed for Chapter 7 bankruptcy in 2014, and the debts were discharged in 2014. That is a legal means to resolve debts. However, Applicant did not provide information to carry his burden of proof in this case by providing information as to his actions taken before 2014 to address his debts.

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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Subparagraph 1.a:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH
Administrative Judge