



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02633

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

08/26/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On November 6, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD 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 review based on the written record in lieu of a hearing. The case was assigned to me on August 19, 2016. Department Counsel submitted a File of Relevant Material (FORM), dated February 17, 2016.¹ Applicant received the FORM on February 24, 2016. Applicant did not submit a response to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

¹The Government submitted six items for the record.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations (1.a through 1.j) under Guideline F. He did not provide any explanations.

Applicant is 47 years old. He is divorced and has no children. He has been employed with his current employer since 2014. (Item 3) He attended a technical school but did not obtain a degree. He completed an application for a security clearance on August 12, 2014.

Financial

The SOR alleges 10 delinquent debts totaling approximately \$70,000, which includes a federal and a state tax lien, vehicle repossession, collection accounts and a medical account. (Items 1, 5 and 6)) In his answer to the SOR, Applicant agreed with the listed debts but he did not give a further explanation or reasons for the delinquent accounts. He noted that the state tax lien is the result of a medical bill when he suffered a heart attack in 2010. (Item 4)

Applicant was unemployed for several periods of time. He was unemployed from July 2013 to August 2014; April 2013 to June 2013; December 2011 to September 2012; and January 2008 to August 2011 and a few months in 2007. (Item 3) However, he gave no reason for the delinquent accounts. In addition, he provided no information or documentation that he is not liable for the accounts. He stated in his security clearance application that he is making payments on his two tax liens in the amount of \$55 a month, but he provided no evidence to confirm that assertion. The 2011 federal tax lien (\$32,492) and the 2010 state tax lien (\$9,026) comprise the bulk of his debt. He did not submit any documentation that he has paid any delinquent accounts or that he has a plan for repayment.

Applicant explained during his investigative interview in late 2014 that he did not pay income tax from 2004 to 2007. He knew that his car was repossessed (\$12,329), but he claimed no knowledge of the other delinquent accounts. (Item 4) Applicant stated that his intent is to pay all his debts.

Applicant provided no information concerning financial counseling or information on his salary. He noted that he has been supported by his girlfriend during his periods of unemployment.

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.

The U.S. 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 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

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.

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

⁷ *Id.*

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

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant incurred delinquent debt in the amount of \$70,000. He has two tax liens, one federal and one state. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulty make it difficult to conclude that it occurred "so long ago." Applicant's debts remain unpaid. He did not provide any documentation; nor did he submit any evidence that he is not liable for all the debts. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant provided no reasons that would qualify him for this mitigating conditions. He has been unemployed over periods of time and suffered a heart attack in 2010, but he noted no nexus between the conditions and his debts. He has been gainfully employed since 2014. He has not provided any documentation or evidence of payments or payment plans. He claims he is paying \$55 a month on the tax liens but there is no evidence to support the claims. He intends to pay his debts, but there is no evidence that he has a plan. I cannot find that he acted responsibly.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. There is no information in the

record that he has addressed any delinquent debts. There is no information to show that he has obtained recent financial counseling. FC MC AG ¶ 20(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) does not apply.

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 a 47-year-old man who is divorced and has no children. He has had health concerns and unemployment. He has been employed since 2014, but has not paid even the smallest debt.

Applicant provided no evidence or documentation concerning payments on the two tax liens. He intends to pay his debts. A promise to pay in the future is not sufficient. He does not have a plan in place to pay the debts. He has not provided mitigation for the financial considerations security concerns.

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-j:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge