



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



In the matter of:

ISCR Case No. 15-02775

Applicant for Security Clearance

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

February 22, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be delinquent on three debts, in a total exceeding \$25,300. Applicant introduced documentation to show two of his delinquencies have been resolved. One remains outstanding in the amount of \$ 11,152. Applicant has failed to present documentation showing that he has addressed that debt. Eligibility for access to classified information is denied.

Statement of the Case

On October 15, 2014, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On November 16, 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 15, 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 February 24, 2016. The Government's submission included Government Items (GE) 1 through 4. A complete copy of the file of relevant material (FORM) was received by Applicant on March 2, 2016. He was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant submitted a one-page letter in response to the FORM (Reply). The Reply did not raise any objections to GE 1, GE 2, GE 4, and they were admitted.¹ The case was assigned to me on September 13, 2016.

Findings of Fact

Applicant is 43 years old. He has been employed by his current employer, a defense contractor, since April 2013. He is married. (GE 1.)

As listed in the SOR, Applicant was alleged to be delinquent on three debts in a total exceeding \$25,300. Applicant admitted all of the debts alleged in SOR. His debts are identified in the credit report entered into evidence. (Answer; GE 4.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant attributed his financial delinquencies to financial hardship. He explained in his Answer that his wife, a real estate agent, experienced a decline in income during the real estate market crash of 2008 and 2009. (Answer.)

Applicant was indebted on a judgment entered against him in September 2010 for the approximate amount of \$5,257, as alleged in SOR 1.a. This judgment was satisfied as of January 27, 2011. Applicant presented a satisfaction of judgment from the court to document that this debt is resolved. (Answer.)

Applicant is indebted on a collections account in the approximate amount of \$11,152, as alleged in SOR 1.b. In his Reply, Applicant indicated he attempted to contact this creditor on March 4, 2016, to work out a payment plan. After a series of phone calls, he reached the creditor currently holding the debt, and offered to settle the account for a payment of \$3,000. He did not provide documentation to show if the offer was accepted or if any payments were made to this creditor. This debt remains unresolved. (Reply.)

Applicant was indebted on a collections account in the approximate amount of \$8,893, as alleged in SOR 1.c. Applicant's October 2014 credit report reflected that Applicant disputed this account. He presented a letter from this creditor that it "has notified the three major credit-reporting agencies to delete any reference to" this

¹GE 3 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 December 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.

account. Department Counsel conceded that this debt was paid off in April 2015. (FORM; Answer.) It is resolved.

Applicant 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 remaining past-due debt. The record lacks any evidence of credit or financial counseling.

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 report in evidence, which substantiate all of the allegations. He has been unable or unwilling to address his largest delinquency. 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. Applicant's largest delinquent account remains unresolved, despite the satisfaction of two smaller debts. He failed to present evidence to show that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant explained that his financial delinquencies were caused by a decline in his wife's income as a result of the collapse of the real estate market in 2008 and 2009. These are factors beyond Applicant's control. However, to be fully applicable, Applicant must also establish that he has acted responsibly. He has not demonstrated that he addressed his remaining debt in a timely manner. Mitigation under AG ¶ 20(b) has not been established.

Applicant provided no evidence of financial counseling. Further, there is no evidence that his financial problems are being resolved or are under control. While he did resolve two accounts, the largest remained unresolved at the close of the record. Mitigation under AG ¶ 20(c) has not been established.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of a dispute or provide evidence of actions to resolve the issue. Applicant has provided evidence showing that he disputed the debt alleged in SOR 1.c, after payment, and that debt was deleted from his credit reports. Mitigation under AG ¶ 20(e) is applicable to SOR subparagraph 1.c only.

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 resolved two of three debts. However he remains indebted on an \$11,152 debt. His failure to resolve that debt precludes a finding that he has the good judgment and reliability needed to hold a security clearance. 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge