



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02861

Appearances

For Government: Christopher J. Connelley, Esq., Department Counsel

For Applicant: *Pro se*

08/05/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On October 15, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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 hearing before an administrative judge. The case was assigned to me on June 6, 2016. A notice of hearing was issued on June 15, 2016, scheduling the hearing for July 15, 2016. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified, but did not submit any documents at the hearing. I kept the record open until July 29, 2016, for additional documentation, but no information was received. The transcript was received on July 26, 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 eight SOR allegations and denied the four other allegations under Guideline F. He provided explanations for each alleged debt.

Applicant is 27 years old. He attended college, but he did not obtain a degree. He is married and has two children. He is sponsored by his former employer, where he worked for one year. He currently works as a machinist. He completed a security clearance application in 2014. (GX 1) This is his first request for a security clearance.

The SOR alleges 14 delinquent debts¹, which total about \$25,000. The alleged debts include collection accounts; medical accounts; a judgment; and various charged off accounts. (GX 3)

Applicant cites to youthful indiscretion for his financial difficulty and spending beyond his means. He noted that his financial difficulties began in 2007. (GX 2) He also had sporadic employment. Applicant believes that his total delinquent debt amounts to about \$3,800. (Tr. 18)

As to SOR allegation 1.a, in the amount of \$4,863, for a student loan, Applicant maintained that the account is paid. He has no documentation to support this claim. (Tr. 15) He explained that for the last two years tax intercepts paid the amount. (Tr. 23)

As to SOR allegation 1.b, in the amount of \$1,305, for a collection account, for a phone company, Applicant stated that it has not been resolved. He stated that he had no knowledge of this account when he received the SOR.

As to SOR allegation 1.c, in the amount of \$1,177 for a loan in collection, he stated that he is working with the company to resolve the matter. (Tr. 15) He did not provide any evidence to support his claim.

As to SOR allegation 1.d, in the amount of \$812, for a collection account, Applicant denied the debt. He does not know anything about such an account. (Tr. 15)

As to SOR 1.e, in the amount of \$544, for a collection account, as a result of a cable account, Applicant stated that the bill has been taken care of many years ago. He did not have any documentation for proof of payment.

As to SOR 1.f, in the amount of \$461, Applicant admitted that this was an old account that he has not resolved to date. (Tr. 15) He stated that he has contacted the collection company, but he did not provide any additional information.

As to SOR 1.g, a 2012 judgment in the amount of \$960, Applicant believes this is a duplicate of another account, but he was not certain.

¹At the beginning of the hearing, the Government withdrew SOR allegation 1.j in the amount of \$22,113.

As to SOR 1.h, a 2010 judgment in the amount of \$4,060, Applicant stated that he has not been able to contact the person and has not seen him in about eight years. (Tr. 16)

As to SOR 1.i, a 2013 judgment in the amount of \$6,749, he testified that this will be paid and satisfied in one week. He stated that he has been paying \$86 every two weeks. (Tr. 16) He owed money to the person who co-signed an auto loan for him in 2010. Applicant fell behind in his monthly payments of \$423 while unemployed and his friend made the payments. He then owed the "remainder" to his friend. In 2013, his friend filed a judgment. There is no evidence of any payments.

As to SOR 1.k, in the amount of \$447, for a medical account, he was unaware of any medical debts. (Tr. 17) As to SOR 1.l, in the amount of \$160 for another medical account, he was also unaware of the debt. He stated that they are not on his credit report. As to SOR allegation 1.o, another medical account in the amount of \$180, he has no knowledge of the debt. (Tr. 18)

As to SOR 1.m, in the amount of \$504, for an insurance company, he admits the debts, but he testified that the policy was cancelled and he paid the amount owed. (Answer to SOR) Applicant did not have any documentation to prove his claim.

As to SOR 1.n, in the amount of \$1,865, for an insurance company, he denied that he owed them. At the hearing, he stated that he was in contact with the company, but he has not paid them. (Tr. 18)

During his 2014 investigative interview, Applicant noted that he was unemployed from July 2007 until November 2007; and June 2011 until April 2012. He used his savings to support himself and he received unemployment compensation. (GX 2) He also became aware of the delinquent debts listed in the SOR. He stated that he intended to investigate the delinquent debts. (GX 2) At the hearing, he stated that he began contacting creditors about six months ago. (Tr. 28) He acknowledged that he did not take the security process seriously. (Tr. 51)

Applicant's net monthly income, including that of his spouse is approximately \$3,500. He has no mortgage, but he pays taxes and utilities. His wife's family gave them the house and property. (Tr. 45) He has a savings account with about \$400. He has no credit card debt. He has not obtained financial counseling. (Tr. 50) He will receive an increase in salary with the new job, by about \$25,000. (Tr. 53)

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.

The Government produced credible evidence that Applicant incurred delinquent debt from judgements, collection accounts and charged-off accounts. 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 difficulties make it difficult to conclude that it occurred "so long ago." Applicant's financial difficulties occurred in the past nine years. He has not resolved many of the delinquent 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.

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 had some unemployment over the years. However, he admitted that he lived beyond his means. He did not make payments arrangements on his debts despite his promise to do so in 2014. He was not proactive in resolving his debts and by his own admission, he did not take the security process seriously until recently.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has no application. Applicant claimed that he paid some debts or made payments on others but he did not produce any evidence to support his claims. FC MC AG ¶ 20(c) (the person has received or is receiving

counseling for the problem) does not apply and there are no clear indications that the problem is being resolved, or is under control).

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 is being sponsored by his former employer. He is a machinist. He is married and has two children. He was forthcoming and candid about his financial issues.

Applicant admits that he incurred the delinquent debt when he was a teen. He now states that he is working diligently to resolve the outstanding matters. However, he did not produce any documentation of payments or plans. He intends to pay his debts, but promises in the future are not sufficient evidence to mitigate security concerns in this case.

Applicant has not presented sufficient information to carry his burden of proof in this case. He has not mitigated the financial considerations security concern. Any doubts must be resolved in favor of the Government.

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:
Subparagraphs 1.a:-1.o
Subparagraph 1.j:

AGAINST APPLICANT
Against Applicant
Withdrawn

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