



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 15-03265
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

04/21/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 7, 2016, the Department of Defense (DOD) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on April 5, 2016, and he elected to have the case decided on the written record in lieu of a hearing. On May 13, 2016, the Government submitted its file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on May 25, 2016. He was afforded an opportunity to respond to the FORM within 30 days of its receipt and to file objections

and submit material to refute, extenuate, or mitigate the security concerns. He responded to the FORM on June 8, 2016. The case was assigned to me on February 16, 2017.

Procedural Issues

In the FORM, Department Counsel references FORM Items 1-6.¹ FORM Item 3 consists of two unauthenticated summaries of interviews with a government investigator conducted on November 18, 2012 and February 25, 2013. In the FORM, Department Counsel advised Applicant that he could object to FORM Item 3 and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be constituted as a waiver, and the evidence would be considered by me. Applicant responded to the FORM, he made some corrections to the interview summaries, and he raised no objections. Given Department Counsel's advisement and Applicant's corrections, I find his waiver to be knowing and intelligent.² FORM Items 2-6 are admitted into evidence as Government Exhibits 2-6, without objection.

In his FORM response, Applicant submitted four documents, including a full copy of Department Counsel's FORM with corrections to FORM Item 3. I admitted these four documents into evidence as Applicant Exhibits (AE) A-D, without objection.

Findings of Fact

The SOR alleges 27 debts. Applicant admitted all of the debts, except for the debts alleged in SOR ¶¶ 1.a., 1.j., and 1.y., which he denied. He also claimed to have paid the debts alleged in SOR ¶¶ 1.d., 1.q., 1.r., 1.s., 1.t., and 1.u. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 52 years old. He graduated from high school in 1983. He has been married since 1986, and he has seven children, ranging in age from 17 to 34. From April 1996 to April 2008, he was employed by a federal contractor. He was terminated in April 2008 following three policy violations within a 12-month period. He remained unemployed (except for a brief construction job) until June 2009. From June 2009 to February 2012, he was employed full time by private companies. In February 2012, he was rehired by the federal contractor for whom he was previously employed.³

¹ FORM Item 1 consists of the SOR and Applicant's response to the SOR, which are pleadings and are entered into the administrative record.

² See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016) (Applicant's waiver of the authentication element must be knowing and intelligent.). See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.")

³ GE 2.

Applicant's August 2012 and March 2015 credit reports establish the 27 alleged debts, which became delinquent between 2006 and 2012:

SOR ¶	Creditor	Balance	Answer	Evidence
1.a.	Credit Card	\$536	Denies	GE 4; GE 5
1.b.	Medical	\$280	Admits	GE 4
1.c.	Credit Card	N/A	Admits	GE 4
1.d.	Judgment	\$3,871	Admits	GE 4
1.e.	Collection	\$134	Admits	GE 4
1.f.	Collection	\$232	Admits	GE 4
1.g.	Collection	\$671	Admits	GE 4
1.h.	Collection	\$637	Admits	GE 4
1.i.	Collection	\$90	Admits	GE 4
1.j.	Collection	\$6,876	Denies	GE 4
1.k.	Collection	\$419	Admits	GE 4
1.l.	Collection	\$653	Admits	GE 4
1.m.	Collection	\$371	Admits	GE 4
1.n.	Collection	\$1,006	Admits	GE 4
1.o.	Collection	\$426	Admits	GE 4
1.p.	Collection	\$867	Admits	GE 4
1.q.	Credit Card	\$286	Admits	GE 4
1.r.	Collection	\$1,229	Admits	GE 4
1.s.	Collection	\$145	Admits	GE 4
1.t.	Collection	\$147	Admits	GE 4
1.u.	Collection	\$167	Admits	GE 4
1.v.	Medical	\$46	Admits	GE 4
1.w.	Medical	\$569	Admits	GE 4
1.x.	Collection	\$2,539	Admits	GE 4
1.y.	Collection	\$150	Denies	GE 4
1.z.	Collection	\$278	Admits	GE 4
1.aa.	Collection	\$71	Admits	GE 4

Although Applicant claimed to have paid the debts in SOR ¶¶ 1.d., 1.q., 1.r., 1.s., 1.t., and 1.v., he only provided documentation showing that the judgment in SOR ¶ 1.d. was satisfied. In his responses to the SOR and FORM, he also claims to be arranging payment plans on SOR ¶¶ 1.b., 1.e., 1.v., and 1.w., but he provided no corroborating documentation. He disputes the debts in SOR ¶¶ 1.a., 1.y., and 1.aa. However, he provided no documentation to substantiate his disputes.⁴ During his November 2012 security interview, he admitted that his wife did have a delinquent account with the creditor in SOR ¶ 1.y.⁵

⁴ Applicant provided AE B, but this document does not clearly show that he is not liable on the debt in SOR ¶¶ 1.aa.

⁵ Response to SOR; AE A; GE 3.

Applicant attributed his financial problems to his loss of employment in 2008. He acknowledged that his rules violations triggered his termination.⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 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."

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 security 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 safeguard 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 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).

⁶ Response to SOR; AE A; GE 3.

Analysis

Guideline F, Financial Considerations

The security concern 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 notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's 27 delinquent debts total approximately \$22,606. These debts became delinquent between 2006 and 2012. The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁷ Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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

⁷ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.).

(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 paid one debt (SOR ¶ 1.d), but he has taken no steps to resolve any of the remaining 26 delinquent debts. Applicant's financial struggles date from before 2006 and are ongoing. AG ¶ 20(a) does not apply.

The application of AG ¶ 20(b) requires both that (1) Applicant's financial indebtedness resulted from circumstances beyond his control and (2) Applicant acted responsibly under the circumstances.⁸ Although Applicant's rules violations caused his unemployment in 2008, his inability to find gainful employment for over a year constitutes a circumstance beyond one's control in the context of AG ¶ 20(b).

AG ¶ 20(b) also requires that an applicant act responsibly under the circumstances.⁹ Applicant paid one debt (SOR ¶ 1.d.); however, there is no documentation of any steps taken to resolve or payments made on the remaining 26 delinquent debts. There is insufficient evidence to conclude that Applicant acted responsibly to address his delinquent debts or to develop and implement a reasonable debt repayment plan. AG ¶ 20(b) does not apply.

There is no record evidence of credit counseling or of a monthly budget to conclude that there are clear indications that Applicant's financial problems are under control. AG ¶ 20(c) does not apply.

The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."¹⁰ Applicant paid one debt (SOR ¶ 1.d.), but there is no documentation of any further debt-resolution efforts. AG ¶ 20(d) partially applies.

To the extent Applicant disputes the debts in SOR ¶¶ 1.a., 1.y., and 1.aa., he has not provided any documentation to demonstrate a reasonable basis to dispute the legitimacy of these debts. He provided a handwritten notation stating that the \$71 parking ticket (SOR ¶ 1.aa.) "will be off credit report," but this documentation does not substantiate a basis for dispute. Thus, AG ¶ 20(e) does not apply. Absent evidence of debt repayment and financial responsibility, I find that security concerns about Applicant's financial problems remain.

⁸ See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

⁹ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) ("All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan.").

¹⁰ See ISCR Case No. 08-12184 at 10 (App. Bd. Jan. 7, 2010) (Good-faith effort to resolve debts must be evidenced by a meaningful track record of repayment).

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 and the factors in AG ¶ 2(c) in this whole-person analysis.

Applicant's unemployment contributed to his financial delinquencies. Nonetheless, he bears the burden to demonstrate that he was financially responsible under the circumstances. Beyond the payment of one debt, there is no evidence of good-faith efforts to repay or resolve his delinquent debts or evidence that he meets his current financial obligations. As a result, the totality of the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a.-1.c.:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e.-1.aa:	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.

Eric H. Borgstrom
Administrative Judge