



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



In the matter of:

Applicant for Security Clearance

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ISCR Case: 15-03495

Appearances

For Government: Andrea M. Corrales, Esquire, Department Counsel
For Applicant: *Pro se*

02/10/2017

Decision

DAM, Shari, Administrative Judge:

Applicant failed to provide evidence of the resolution of any of the alleged delinquent debts, which totaled over \$100,000. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On December 4, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on December 15, 2015 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On March 22, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant. He received it on March 30, 2016. The FORM notified him that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. He did not submit any additional information or objections to the Government's Items; hence, Items 1 through 8 are admitted into evidence. DOHA assigned the case to me on January 27, 2017.

Findings of Fact

Applicant admitted the allegations contained in the SOR, and asserted that he paid or made arrangements to pay many debts, and that some debts were charged-off and no longer valid. (Item 2.) His admissions are incorporated into these findings of fact.

Applicant is 44 years old and a high school graduate. He married his wife in 1993. They have three children. He worked for a private company from 2003 until 2008, when he started a position with a defense contractor. In August 2009, he completed a security clearance application (SCA).

Based on credit bureau reports (CBRs) from March 2015 and May 2013, and a 2011 Chapter 13 bankruptcy filing, the SOR alleged debts, totaling \$111,507, which became delinquent between 2008 and 2014. (Items 5, 7, 8.) The status of each of the alleged debts is as follows:

1. (SOR ¶ 1.a) In September 2011, Applicant filed Chapter 13 bankruptcy. He paid \$2,700 into the payment plan. In March 2012, the case was dismissed because Applicant failed to continue making payments. (Items 2, 4, 6.) Sixteen debts (SOR ¶¶ 1.a (1) through (16)) were included in that bankruptcy and totaled \$107,331. Applicant stated that he paid several of those debts or made payment arrangements for them. He said some were charged-off and were no longer being collected. (Item 2.) He did not submit proof of payments made, payment plans negotiated, or a reason he is no longer responsible for charged-off accounts. All of these 16 debts are unresolved.
2. (SOR ¶ 1.b) The \$2,007 debt is owed for a personal loan. There is no evidence that this debt is resolved or being resolved. However, it is alleged in SOR ¶¶ 1.a (1) through (16).
3. (SOR ¶ 1.c) The \$1,944 debt is owed for a personal loan. There is no evidence that this debt is resolved or being resolved. However, it is alleged in SOR ¶¶ 1.a (1) through (16).

4. (SOR ¶ 1.d) The \$100 debt is owed for a medical bill. There is no evidence that this debt is resolved or being resolved.
5. (SOR ¶ 1.e) The \$63 debt is owed for a medical bill. There is no evidence that this debt is resolved or being resolved.
6. (SOR ¶ 1.f) The \$62 debt is owed for a medical bill. There is no evidence that this debt is resolved or being resolved.

Applicant did not submit evidence that he obtained credit or financial counseling, or sought other assistance to resolve his delinquent debts since March 2012 when his Chapter 13 bankruptcy was dismissed. He did not provide a current budget or a plan to address the delinquent debts.

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 (AG) 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, these guidelines are applied 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 (a) and (c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹

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 delinquent debt. From at least 2008 to 2014, he accumulated delinquent accounts, totaling over \$100,000, which remain unresolved. This pattern of delinquent debt, and inability or unwillingness to pay lawful debts, raises

¹ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

security concerns under the above disqualifying conditions, and shifts 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 failed to produce evidence that he addressed any of alleged delinquent accounts or that similar problems are unlikely to recur. He provided no evidence that the delinquencies were caused by conditions beyond his control, or that he acted responsibly under those circumstances. He presented no evidence of financial counseling. There are no clear indications that his financial problems are being resolved in good faith, or are under control. He did not present documentation that he formally disputed any of the SOR-listed debts and that they have been resolved in his favor. Accordingly, the record is insufficient to establish mitigation under any of the above conditions.

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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who is responsible for his choices and conduct that underlie the security concerns alleged in the SOR. After submitting his Answer, the Government notified him in its FORM that he failed to provide documentation corroborating statements in his Answer that many debts were paid or being paid. He was given 30 days to submit proof of the debts' status, but he did not do so. Overall, the record evidence leaves me with doubt as to Applicant's judgment, reliability, and present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from financial considerations.

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:	Against Applicant
Subparagraphs 1.b and 1.c:	For Applicant
Subparagraphs 1.d through 1.f:	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.

SHARI DAM
Administrative Judge