



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 15-03674
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

03/24/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns stemming from his delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

On January 15, 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 February 18, 2016, and he elected to have the case decided on the written record in lieu of a hearing. On March 14, 2016, the Government submitted its file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on April 6, 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. Applicant did not respond to the FORM. The case was assigned to me on February 16, 2017.

In the FORM, Department Counsel references FORM Items 1-4.¹ FORM Items 2-4 are admitted into evidence as Government Exhibits (GE) 2-4, without objection.²

Findings of Fact

The SOR alleges three unpaid judgments (SOR ¶¶ 1.a.-1.c.) and two other delinquent accounts (SOR ¶¶ 1.d. and 1.e.). Applicant admitted all five alleged debts. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 47 years old. He attained an associate's degree in May 1990 and a bachelor's degree in May 1992. He was first married from 1992 to 1995. He has been married to his second wife since 1997. He has three children, ages 12, 15, and 17.³

After having been laid off in early 2006, Applicant searched for employment. Unsuccessful in finding employment, he partnered with a friend in starting a restaurant. Applicant obtained loans and used retirement funds to generate capital for the business. The partner later abandoned the business and the restaurant failed shortly thereafter. Applicant sought other employment and has been employed full time since February 2008 as an engineer. He has been employed full time by a DOD contractor since September 2008.⁴

In February 2009, a judgment (SOR ¶ 1.a.) was entered against Applicant in favor of a credit card company in the amount of \$9,981. In December 2008, a judgment (SOR ¶ 1.b.) was entered against Applicant in favor of a credit card company in the amount of \$13,498. In April 2009, a judgment (SOR ¶ 1.c.) was entered against Applicant in the amount of \$4,386. There is no evidence of any efforts by Applicant to resolve or repay these unpaid judgments.⁵

Applicant is not financially liable for the account in SOR ¶ 1.d. as he is an "Authorized User" according to the credit reports. He is liable for the account in SOR ¶ 1.e., which has been delinquent since October 2009 in the approximate amount of

¹ FORM Item 1 consists of the Statement of Reasons and Applicant's Answer, which are pleadings and are entered into the administrative record.

² 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.

⁴ Response to the SOR.

⁵ GE 3.

\$474. There is no evidence of any efforts by Applicant to resolve or repay this delinquent debt.⁶

In his response to the SOR, Applicant explained that his unemployment and business failure triggered the financial delinquencies. His security clearance application listed personal debts and business debts that he personally guaranteed. He referenced some repayments; however, he has provided no documentation to corroborate these claims. He provided no information about what steps he has taken to repay or resolve his personal and business debts.⁷ He provided no information about the state of his current finances.

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

⁶ GE 3; GE 4.

⁷ GE 2.

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).

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 is not liable for the debt in SOR ¶ 1.d.; however, he is responsible for the four remaining debts totaling approximately \$28,339. These debts became delinquent in 2008 and 2009, and they remain unresolved. Accordingly, the evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

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.⁸ 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

⁸ 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.).

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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

There is no documentary evidence showing any payments on the four delinquent accounts, nor evidence of financial responsibility. Although the circumstances that triggered the financial indebtedness – Applicant's unemployment and failed business – are unlikely to recur, the absence of steps to resolve or repay the alleged debts casts doubts on his reliability and good judgment. 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 that (2) Applicant acted responsibly under the circumstances.⁹ Applicant became unemployed in 2006, had an unsuccessful business, and was not gainfully employed until 2008. Because these circumstances hindered his ability to address his delinquent debts, they constitute circumstances beyond one's control in the context of AG ¶ 20(b).

AG ¶ 20(b) also requires that an applicant act responsibly under the circumstances.¹⁰ Although Applicant's unemployment and failed business triggered his financial indebtedness, he has been gainfully employed since February 2008. He has provided no evidence of debt resolution or repayment. 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. Therefore, AG ¶ 20(b) does not apply.

There is neither record evidence of credit counseling nor evidence, such as a monthly budget, to conclude that there are clear indications that Applicant's financial problems are under control. Rather, the absence of evidence of payments or other steps to resolve the alleged delinquent debts undercuts such a conclusion. Therefore, AG ¶ 20(c) does not apply.

⁹ See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

¹⁰ 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.").

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.”¹¹ There is no evidence of any payments on the delinquent debts or other steps towards debt resolution. AG ¶ 20(d) does not apply.

Applicant’s four delinquent debts have remained delinquent for several years, without any evidence of debt repayment or resolution. He has not provided any evidence about his current finances. Absent such evidence, I find that financial considerations concerns remain.

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.

Circumstances beyond Applicant’s control – his unemployment and failed business – contributed to his financial delinquencies. Nonetheless, he bears the burden to demonstrate that he acted financially responsibly under the circumstances. There is no evidence of good-faith efforts to repay or resolve these 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.

¹¹ 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).

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
Subparagraph 1.e.:	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