



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-03920
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esquire, Department Counsel
For Applicant: *Pro se*

02/17/2017

Decision

HOGAN, Erin C., Administrative Judge:

On December 14, 2015, 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 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 within the Department of Defense after September 1, 2006.

On January 20, 2016, Applicant answered the SOR. In a February 4, 2016 e-mail, he requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on April 27, 2016. Applicant received the FORM on May 3, 2016. He responded to the FORM on May 18, 2016. (Item 9) Department Counsel did not object to Applicant's response to the FORM. (Item 10) On May 24, 2016, the FORM was forwarded to the Hearing Office and assigned to me on December 9, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his response to the SOR, Applicant admits the SOR allegations. (Item 1)

Applicant is being sponsored by a DOD contractor seeking to obtain a security clearance. If he obtains a security clearance, he will be hired. Since March 2010, Applicant has worked full-time with another company that does not require a security clearance. He has a high school diploma. He has had one period of unemployment between February 2009 and March 2010. He is single and has a seven-year-old daughter who does not live with him. (Item 3; Item 4)

On September 4, 2013, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). A subsequent background investigation revealed the following financial issues which are alleged in the SOR: a Chapter 13 bankruptcy filed on January 31, 2012, and dismissed on April 9, 2013 (SOR ¶ 1.a: Item 5 at 1; Item 6 at 3; Item 7); a past due mortgage account in the amount of \$24,864 that was in foreclosure (SOR ¶ 1.b: Item 5 at 1-2); and a \$293 utility account placed for collection in August 2014. (SOR ¶ 1.c: Item 5 at 1; Item 6 at 5)

Additional delinquent accounts include 24 delinquent medical accounts that were placed for collection, a total balance of \$2,230 (SOR ¶¶ 1.d – 1.k, 1.n-1.cc: Item 6 at 5 - 10); a \$178 delinquent utility account placed for collection in August 2014 (SOR ¶ 1.l: Item 5 at 1; Item 6 at 6); and an \$84 cable television account that was placed for collection in July 2014. (SOR ¶ 1.m: Item 5 at 2; Item 6 at 7)

In his response to the SOR, Applicant indicated that the medical debts alleged in SOR ¶¶ 1.d – 1.k, and 1.n -1.cc were covered by a workmen's compensation claim. He provided sufficient documentation to verify this assertion in his response to the SOR and response to the FORM. (Item 1; Item 9) The medical debts are not listed on his most recent credit report, dated November 24, 2015. (Item 5).

He indicates in his response to the SOR, that he intends to contact the creditors alleged in SOR ¶¶ 1.c, 1.l, and 1.m to plan payments. He provided proof that he paid \$20 towards the \$84 cable television debt alleged in SOR ¶ 1.m. (Item 1) In his response to the FORM, Applicant addressed the medical debts that were covered by Workmen's Compensation, but did not address the status of his mortgage foreclosure alleged in SOR ¶ 1.a; the two utility collection accounts alleged in SOR ¶¶ 1.c and 1.l, and the cable television collection account alleged in SOR ¶ 1.m. (Item 9) The status of the mortgage foreclosure alleged in SOR ¶ 1.b, and the debts alleged in SOR ¶¶ 1.c, 1.l, and 1.m are unresolved.

Policies

When evaluating an applicant's suitability for a security clearance, the 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, which must be considered when determining 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 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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 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." 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 relating to the guideline 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 disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations) apply to Applicant's case. Applicant encountered financial problems since about 2012. The SOR alleges a Chapter 13 bankruptcy which was dismissed, a mortgage foreclosure with a total loan amount of \$36,871, three delinquent consumer accounts placed for collection, a total balance of \$555, and 24 medical accounts placed for collection with a total balance of approximately \$2,230. Both AG ¶ 19(a) and AG ¶ 19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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);

AG ¶ 20(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);

AG ¶ 20(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);

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts); and

AG ¶ 20(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).

AG ¶ 20(a) does not apply. Applicant has encountered financial problems since at least 2012, when he filed for Chapter 13 bankruptcy. The bankruptcy was eventually dismissed. While Applicant does not have a lot of unresolved debt, the main issue involves his mortgage foreclosure. Applicant provided no information on the status of his mortgage foreclosure nor provided an explanation of the steps he is taking to resolve the three minor consumer debts alleged in SOR ¶¶ 1.c, 1.l. and 1.m. For this reason, I cannot conclude Applicant's financial issues are unlikely to recur and doubts remain about Applicant's current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies in the Applicant was unemployed between February 2009 and March 2010. However, most of the financial problems arose after Applicant's period of unemployment. For this reason, AG ¶ 20(b) is given less weight. Applicant has been employed full-time since March 2010. He has not provided an explanation as to why he could not pay the bills that are unresolved.

AG ¶ 20(c) does not apply because Applicant provided no proof that he attended financial counseling. The status of his unresolved delinquent accounts remain unresolved. His financial situation remains uncertain.

AG ¶ 20(d) applies with respect to the medical accounts alleged in SOR ¶¶ 1.d – 1.k, and 1.n – 1.cc. Applicant provided sufficient evidence to prove that these medical accounts were paid under a workmen's compensation claim. AG ¶ 20(d) does not apply with respect to the mortgage foreclosure alleged in SOR ¶ 1.b and the three consumer

debts alleged in SOR ¶¶ 1.c, 1.l, and 1.m. Applicant made a partial payment towards the cable television account alleged in SOR ¶ 1.m, but provided no proof of his efforts to resolve the account in his response to FORM. Having provided no information or an explanation on the status of the debts alleged in SOR ¶¶ 1.b, 1.c, 1.l and 1.m, I cannot conclude Applicant made a good-faith effort to resolve these accounts.

AG ¶ 20(e) does not apply because Applicant did not dispute his unresolved debts.

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 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.

In requesting an administrative determination, Applicant chose to rely on the written record. However, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts that would mitigate financial considerations security concerns. While he provided sufficient evidence that the medical debts were paid by Workmen's Compensation, he provided no information on the status of his remaining unresolved debts. The most serious of Applicant's unresolved debt is the mortgage foreclosure alleged in SOR ¶ 1.b. The three minor unresolved debts alleged in SOR ¶¶ 1.c, 1.l, and 1.m total only \$555. Applicant should have been able to resolve these debts. His failure to do so indicates a negligent attitude towards paying his debts. He did not provide sufficient information as to the status of his remaining unresolved debts. Applicant did not mitigate the concerns arising from financial considerations.

The determination of an individual's eligibility for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating to the evidence presented. Under Applicant's current circumstances, the granting of a security clearance is not warranted. In the future, if Applicant takes

proactive steps towards resolving his delinquent accounts and establishes a track record of repayment, he may demonstrate persuasive evidence of his security worthiness.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In the future, Applicant may be able to demonstrate a track record of resolving his financial obligations. It is too soon to make that conclusion at this point. The security concerns raised under financial considerations are not mitigated.

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
Subparagraphs 1.d – 1.k:	For Applicant
Subparagraphs 1.l – 1.m:	Against Applicant
Subparagraphs 1.n – 1.cc:	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.

ERIN C. HOGAN
Administrative Judge