



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04172

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel

For Applicant: *Pro se*

05/25/2017

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the security concerns related to his delinquent debts. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On April 11, 2013, Applicant submitted a security clearance application (SCA). On December 9, 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 (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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on April 6, 2016 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On May 4, 2016, Department Counsel prepared the Government's written

case. The Defense Office of Hearings and Appeals (DOHA) mailed a complete copy of the File of Relevant Material (FORM), containing seven Items, to Applicant on May 6, 2016. He received it on May 20, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit any documents or object to the Government's FORM; hence, all Items are admitted. DOHA assigned the case to me on March 20, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.b, 1.c and 1.d, and denied the allegations in 1.a and 1.e, and offered explanations. (Item 2.)

Applicant is 58 years old and married for 27 years. He has one adult child. He has worked for a federal contractor since January 2013. Prior to this position, he worked in low-paying positions for two or three years, after having been laid off in 2010 from a job where he worked for ten years. (Items 2, 3, 7.)

Based on credit bureau reports (CBRs) from April 2016, December 2015, April 2015, and April 2013, the SOR alleged five delinquent debts, which totaled about \$18,500, and included a mortgage that was in foreclosure (\$111,892). (Items 4, 5, 6.) The status of each debt is as follows:

SOR ¶ 1.a reflected a past-due mortgage balance of \$14,135. The last payment on the account was made in November 2012. The bank foreclosed in June 2013, and sold it in August 2013. Applicant stated that he subsequently received information from the mortgagor that his account was closed and he did not owe any money on the loan. (Answer: Account History; CBR.) It is resolved.

SOR ¶ 1.b is a \$1,457 unpaid credit card. The last payment was made in December 2006. (Item 6.) It is unresolved.

SOR ¶ 1.c is a \$1,180 unpaid cell phone debt. The last payment was made in December 2007. (Item 6.) It is unresolved.

SOR ¶ 1.d is an unpaid \$1,045 cell phone debt. The last payment was made in December 2006. (Item 6.) It is unresolved.

SOR ¶ 1.e is an unpaid \$700 credit card. The last payment was made in November 2006. (Item 6.) Applicant said he had no recollection of this debt. (Answer.) It is unresolved.

Applicant said he contacted the creditors referenced in SOR ¶¶ 1.b through 1.d to establish payment plans after being interviewed in July 2013 by a government investigator regarding his SCA. He said he could not afford the plans any of the

creditors proposed. He stated that he has never been contacted by the creditors since his July 2013 contacts. He indicated that he has been able to manage his expenses since April 2013, after starting his current position in January 2013. (Answer.)

Applicant offered no evidence of financial counseling, a workable budget, or other documentation to show that he has plan to address the four old delinquent debts and meet his financial obligations.

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(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 accumulated five delinquent accounts totaling about \$18,500 between 2005 and 2012, which included a defaulted mortgage. Four of them remain unresolved. His history of an inability or unwillingness to pay lawful debts, raises 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 delinquencies:

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

(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's financial problems have been ongoing for many years. They continue to reflect his unreliability and poor judgment. He provided some evidence that periods of under-employment arose from circumstances beyond his control after he was laid off from a job he held for ten years. However, he did not provide evidence that he attempted to manage responsibly his debts while they were accumulating or after he obtained his current position. AG ¶¶ 20(a) and (b) do not provide mitigation of the security concerns. There is no evidence that he participated in financial counseling or that his financial delinquencies are under control. He failed to establish mitigation under AG ¶ 20(c). Although his delinquent mortgage was resolved through a foreclosure, four old debts of modest amounts remain unaddressed and unresolved. No mitigation was established under AG ¶ 20(d). Applicant disputed the \$700 debt alleged in SOR ¶ 1.e, but provided no substantiating documentation to show what actions he took or to prove it is not his debt. It remains on his credit report. Thus, AG ¶ 20(e) does not apply.

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 financial obligations. After he lost a long-held position in 2010, he said he began having financial problems because he did not have enough money to pay his bills. However, those problems appear to have occurred earlier, as the four unresolved delinquent debts are from 2006 and 2007. He said he attempted to work out a payment plan with the creditors in July 2013, but was unable to do that because he did not have enough money, although by that time he had started working in his current position as of January 2013. He never contacted his creditors after July 2013, which indicates he has not taken responsibility for his debts. At this time, he did not provide sufficient evidence from which to conclude similar problems will not recur or that he intends to pay his delinquent obligations. Overall, the record evidence leaves me with doubts as to Applicant's 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:	For Applicant
Subparagraphs 1.b through 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.

SHARI DAM
Administrative Judge