



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 15-04764
)
 Applicant for Security Clearance)

Appearances

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

02/15/2017

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 January 8, 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 1, 2016, and he elected to have the case decided on the written record in lieu of a hearing. On March 9, 2016, the Government submitted its file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on March 16, 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 did not provide a response. The case was assigned to me on January 25, 2017. In the FORM, Department Counsel references FORM Items 1-4. I admitted FORM Items 2-4 as Government Exhibits (GE) 2-4 into evidence, without objection.¹

Findings of Fact

The SOR alleges three medical collections (SOR ¶¶ 1.a.-1.c.), two delinquent lease accounts (SOR ¶¶ 1.e-1.f.), child support arrearages (SOR ¶¶ 1.h., 1.j., and 1.k.), and other delinquent accounts (SOR ¶¶ 1.d., 1.g., and 1.i.). Applicant admitted all 11 debts in his response to the SOR. He claimed that SOR ¶¶ 1.h. and 1.k. were identical debts.² After a thorough and careful review of the pleadings and exhibits, I made the following findings of fact:

Applicant is 35 years old. He served in the U.S. military from January 2000 to November 2007, and he was honorably discharged. He then was employed full time until February 2009, when he began his undergraduate education. He was unemployed from February 2009 to July 2010 and employed part time from July 2010 to June 2014. He received a bachelor's degree in May 2014, and he has been employed full time by a DOD contractor since June 2014.³ Applicant was married from March 2001 to November 2007. He has three children, ages 3, 11, and 14.⁴

Applicant's three medical collection accounts (SOR ¶¶ 1.a.-1.c.) total approximately \$255. His December 2015 credit report lists these accounts as delinquent since September 2014 (SOR ¶ 1.a.) and December 2013 (SOR ¶¶ 1.b.-1.c.). In his response to the SOR, he claimed that these medical collections were connected to a car accident for which he was awaiting insurance reimbursement; however, he has provided no documentation or further information to corroborate this claim.⁵

Applicant's December 2014 credit report lists the collection account in SOR ¶ 1.d. as having been delinquent since December 2013 in the approximate amount of \$988. In his response to the SOR, Applicant stated that he intends to dispute this account; however, he failed to provide the basis for his dispute or documentation to corroborate his claim.⁶

¹ See also ISCR Case No. 14-06781 at 3 (App. Bd. Dec. 16, 2016) (By not responding to the Government's FORM, "Applicant waived any objection he might have had to this document."). FORM Item 1 consists of the SOR and the response to the SOR. These documents are pleadings and are included in the record.

² Response to SOR.

³ GE 2.

⁴ GE 2.

⁵ GE 4; Response to SOR.

⁶ GE 3; Response to SOR.

The two delinquent lease accounts total approximately \$10,100. Applicant's December 2015 credit report lists these accounts as having become delinquent in December 2010 (SOR ¶ 1.f.) and July 2012 (SOR ¶ 1.e.). In his response to the SOR, Applicant appears to dispute his liability for these two broken leases; however, he failed to adequately explain his disputes or provide documentation to corroborate his claims.⁷

The SOR alleges three delinquent child support accounts (SOR ¶¶ 1.h., 1.j., and 1.k.). Applicant's December 2015 credit report lists a child support account in the approximate amount of \$5,757.⁸ On his security clearance application (SCA), Applicant listed that he owed \$15,000 in delinquent support to one individual (SOR ¶ 1.j.) and approximately \$6,000 in delinquent support to another individual (SOR ¶ 1.k.). He stated that he was making regular child support payments; however, he has provided no documentation to corroborate this claim or payments.⁹ Because Applicant has three children and because his claim that SOR ¶¶ 1.h. and 1.k. are duplicative is a conclusory statement unsupported by further information or documentation, I find that he has provided insufficient evidence to show that SOR ¶¶ 1.h. and 1.k. are duplicative.

Applicant's December 2015 credit report lists the account in SOR ¶ 1.g. as having been delinquent since December 2013 in the approximate amount of \$4,228. There is no evidence of any payments to resolve this delinquent debt.¹⁰

Applicant's December 2014 credit report lists the account in SOR ¶ 1.i. as having been delinquent since December 2014 in the approximate amount of \$131. There is no evidence of any payments to resolve this delinquent debt.¹¹

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

⁷ GE 4; Response to SOR.

⁸ GE 4.

⁹ GE 2; Response to SOR.

¹⁰ GE 4.

¹¹ GE 3.

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).

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 11 debts total approximately \$42,469. Some of the debts date back to 2010. Accordingly, 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.¹²

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

(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.

There is no documentary evidence of any payments on Applicant's 11 delinquent accounts. Because the debts are ongoing and unresolved, AG ¶ 20(a) is not applicable.

The application of AG ¶ 20(b) requires both (1) Applicant's financial indebtedness resulted from circumstances beyond his control and (2) Applicant acted responsibly under the circumstances.¹³ Applicant's employment history indicates that he has been gainfully employed full time since June 2014. Between February 2009 and June 2014, he was attending college and was unemployed or employed part time. Nonetheless, because Applicant's periods of unemployment and underemployment may have

¹² 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.).

¹³ See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

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.¹⁴ Here, 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, I conclude that AG ¶ 20(b) does not apply.

There is neither record evidence of credit counseling nor record 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.

There is no documentary evidence of any payments made or steps taken to resolve these delinquent debts. AG ¶ 20(d) does not apply.

To the extent Applicant disputes the one collection account (SOR ¶ 1.d.) and the two delinquent rent accounts (SOR ¶¶ 1.e. and 1.f.), he has provided no reasonable explanation for his disputes or documentation to corroborate his claims. Similarly, he has provided no documentation to demonstrate that any of the child support accounts are duplicates. Thus, AG ¶ 20(e) does not apply. Absent evidence of debt repayment and financial responsibility, 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.

¹⁴ 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.").

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 delinquent debts arose while he was underemployed and attending college. He was provided an opportunity in his SOR response and in response to the Government's FORM to show what steps he has taken to resolve his delinquent debts and to show financial responsibility; however, no such information was provided. 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.k.:	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