



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



In the matter of:

ISCR Case No. 15-05041

Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

February 22, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is alleged to be delinquent on six debts, in a total exceeding \$20,800. Applicant failed to introduce documentation to show that any of his delinquencies have been resolved. He failed to file his 2011 Federal income tax return until September 2016. Eligibility for access to classified information is denied.

Statement of the Case

On September 25, 2014, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On May 31, 2016, the Department of Defense 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; 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 September 1, 2006.

Applicant answered the SOR on June 28, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on August 17, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 24, 2016, scheduling the hearing for September 21, 2016. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified and submitted three exhibits (AE) marked AE A through AE C. Department Counsel had no objections to AE A through AE C, and they were admitted. The record was left open for receipt of additional documentation. On September 28, 2016, Applicant submitted seven additional exhibits, marked AE D through AE J. Department Counsel had no objections to AE D through AE J, and they were admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on September 30, 2016.

Findings of Fact

Applicant is 44 years old. He has been an employee of a government contractor since July 2012. Applicant has never been married, and has one adult son. Applicant is currently attending community college. (GE 1; AE A; Tr. 25.)

As listed in the SOR, Applicant was alleged to be delinquent on six debts, in a total exceeding \$20,800. The SOR also alleged he failed to file his 2011 Federal income tax return. Applicant admitted SOR allegations 1.a, 1.f, and 1.g. He denied subparagraphs 1.b through 1.e. His debts are identified in the credit reports entered into evidence. (Answer; GE 3; GE 4.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant attributes his financial delinquencies to his unemployment from July 2011 through October 2011, and December 2011 through July 2012. He was terminated from his job in July 2011 for tardiness. (GE 1; GE 2; Tr. 18, 33.)

Applicant's debts include: a judgment relating to a vehicle loan in the amount of \$4,965, as alleged in SOR allegation 1.b; a collections account in the amount of \$224, as alleged in SOR allegation 1.c; a collection account for a former apartment lease in the amount of \$2,519, as alleged in SOR allegation 1.d; a collection account in the amount of \$2,957, as alleged in SOR allegation 1.e; a collection account for an automobile loan in the amount of \$9,275, as alleged in SOR allegation 1.f; and a medical account that was placed for collections in the amount of \$874, as alleged in SOR allegation 1.g. Applicant had not attempted to contact the collection agents identified in SOR allegations 1.b, 1.d, and 1.g. He claimed to dispute the debt identified in SOR allegations 1.c and 1.e. He testified he was negotiating payments of \$150 per month with the creditor identified in 1.f. He failed to present documentation to support any of these claims. The debts in SOR allegations 1.b through 1.g are unresolved. (GE 2; GE 3; GE 4; Tr. 20-24; 40-51.)

Applicant testified that he failed to file his 2011 Federal income tax return, as alleged in SOR subparagraph 1.a, because he had an outstanding W2 form that he did not receive because he had moved. He testified that a tax consulting company advised

him that if he did not owe additional taxes, there was no penalty for failure to file a Federal income tax return for that year. Applicant filed his delinquent 2011 tax return after the hearing on September 24, 2016. (GE 1; GE 2; AE B; AE C; AE E; Tr. 19, 34-40.)

Applicant provided no household budget showing monthly household expenses, but claimed to have \$500 left over at the end of the month after meeting his monthly expenses. He testified that he lives within his means and only buys things that he needs. He does not use credit cards. Applicant claimed to have attended some financial counseling, but did not elaborate on the duration or extent of that counseling. (Tr. 57-62.)

Applicant presented a letter of recommendation from a friend who has known him for 15 years. She indicated that Applicant is a dedicated man, who is giving and generous. She believes him to be reliable and trustworthy. (AE F.) Applicant's performance appraisal reflects he consistently exceeds expectations. (AE J.) He has received several performance based awards from his employer. (AE G; AE H; AE I.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. 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 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 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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, as follows:

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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has a history of financial indebtedness documented by the credit reports in evidence, which substantiate all of the allegations. He failed to document he resolved any of his delinquencies. Further, he failed to file his 2011 Federal Income tax returns as required by law, until after the hearing. The evidence raises security concerns under all of these disqualifying conditions, thereby shifting 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's financial problems are ongoing. All of Applicant's delinquent accounts remain unresolved. He only recently filed his delinquent Federal income tax return for the 2011 tax year. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant attributed his delinquencies to his unemployment. However, his first period of unemployment was due to his tardiness, a situation within his control. Moreover, he failed to establish that he has acted reasonably or responsibly with respect to his debts and tax filing obligation. He has not demonstrated that he addressed his debts in a timely manner. Mitigation under AG ¶ 20(b) has not been established.

Applicant provided no evidence of the depth or duration of any financial counseling. That counseling did not appear to impact his willingness to resolve his delinquent accounts alleged on the SOR. Further, there are no clear indications that his financial problems are being resolved or are under control. Mitigation under AG ¶¶ 20(c) or (d) has not been established.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of any dispute or provide evidence of actions to resolve the issue. Applicant has not provided evidence of any formal dispute or a basis for one. Mitigation under AG ¶ 20(e) has not been established.

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 in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant performs well at work and is a trusted friend to the individual who wrote him a reference letter. However, Applicant's debts remain largely unresolved. He only recently filed his 2011 Federal income tax return. While he was given the opportunity to document the current status of his debts, he failed to produce evidence of any actions on his delinquent accounts. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	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.

Jennifer I. Goldstein
Administrative Judge