



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



In the matter of:)
)
) ISCR Case No. 15-05191
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley Esq., Department Counsel
For Applicant: *Pro se*

06/23/2017

Decision

CREAN, Thomas M., Administrative Judge:

Applicant did not provide sufficient documentation to mitigate financial considerations security concerns under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On January 23, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for employment with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on March 12, 2015. (Item 3) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance.

On February 19, 2016, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in the DOD on September 1, 2006. On June 8, 2017, new AGs were implemented and are effective for decisions issued after that date.¹

Applicant answered the SOR on March 16, 2016, admitting three allegations of delinquent debt under Guideline F (SOR 1.a, 1.d, 1.e). Applicant denied two allegations of delinquent debt (SOR 1.b and 1.c). He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on April 25, 2016. (Item 5) Applicant received a complete file of relevant material (FORM) on May 2, 2016. He was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not respond to the FORM. I was assigned the case on May 9, 2017.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM investigator (Item 3) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the PSI summary. Applicant did not respond to the FORM, so he did not raise any objection to consideration of the PSI. Since there is no objection by Applicant, I will consider information in the PSI in my decision.

Findings of Fact

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 52 years old. He graduated from high school in May 1982. He served on active duty in the Navy from February 1985 until February 1989 when he was honorably discharged. Applicant married in January 1985, and has two children. He has been employed as an operations supervisor for a defense contractor since August 1996. He received an interim clearance of eligibility for access to classified information in January 2008. (Item 2, e-QIP, dated January 23, 2015, Item 3 PSI, dated March 12, 2015)

The SOR alleges, and a credit report (Item 4, dated February 13, 2015) confirm the following delinquent debts for Applicant: a federal tax lien of \$16,844 (SOR 1.a); a judgment for a bank for \$3,984 (SOR 1.b); a medical account in collection for \$352 (SOR 1.c); a medical account in collection for \$239 (SOR 1.d); and a home foreclosure in November 2011 (SOR 1.e). The amount of the delinquent debt is approximately \$21,000.

¹ I considered the previous AGs, effective September 1, 2006, as well as the new AGs, effective June 8, 2017. My decision would be the same if the case were considered under the previous AGs.

In the March 2015 PSI, Applicant acknowledged the federal tax lien. Applicant explained that he was on disability from 2003 until 2005. Tax withholdings were not taken from the disability payments. When he filed his federal tax return in 2005, his federal tax debt was approximately \$16,000. He contacted the Internal Revenue Service (IRS) to arrange a payment plan but was not successful. The IRS required a monthly payment he could not afford. He or his wife have repeatedly contacted the IRS to reach a payment plan to no avail. The IRS has kept small tax refunds he received that have not resolved the tax lien. Applicant's plan is to pay off an outstanding loan that he used to pay for his mother's funeral. When that loan is paid, he will again contact the IRS to see if he can arrange a payment plan. He will start to repay the tax lien if he can reach an agreement.

Applicant also reported in the PSI that he has no knowledge of the judgment at SOR 1.b., or the medical debts at SOR 1.c, and 1.d. At the time of the interview, he had not inquired into the accounts. Applicant acknowledged that his house was foreclosed in 2008. Applicant was current with his mortgage until he went on disability between 2001 until 2005. He did not have sufficient resources to make the mortgage payments. He tried to reach payments arrangements with the mortgage holder, but the monthly payments requested by the mortgage holder were larger than he could afford. When his wife lost her job in 2008, they could no longer afford to make any mortgage payments. The house was foreclose in 2011. After the foreclosure, Applicant has no debt remaining from the house.

In his response to the SOR, Applicant acknowledged his federal tax lien, He denied the bank debt at SOR 1.b and stated he is disputing the debt. He provided no documentations concerning the dispute. He denied the medical debt at SOR 1.c. He stated that the debt was reported to the credit reporting agency in error by the medical provider and the provider had it removed from Applicant's credit report in 2015. Applicant did not provided documentation to verify his statement.

Applicant stated that the medical debt at SOR 1.d was paid in 2015. He did not provide a receipt or any other document to establish his payment.

He acknowledged the foreclosure at SOR 1.e. He reported that after being placed on disability, he tried to refinance the mortgage but the mortgage company refuse to cooperate with him. He did not provide any evidence of his efforts to refinance the mortgage or any information concerning payments that he made. (Item 1, Response to SOR, dated March 16, 2016)

Applicant did not provide any documents to verify his SOR responses. He did not present any documents to verify that he contacted creditors to make payment or settlement arrangements. He did not provide any evidence of his efforts to pay, settle, compromise, dispute, or otherwise resolve any of the delinquent debts.

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 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility 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.

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 for 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 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 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 and sensitive information)

Analysis

Financial Considerations

Failure 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 or sensitive information. (AG ¶ 18) An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or 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 meet their financial obligations. 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 required to manage his or her finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Credit reports reveal, and Applicant admitted, that he has multiple delinquent debts dating to as early as 2011. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

- (a) inability to satisfy debts,
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

The information raises issues about Applicant's willingness and ability to meet his financial obligations. Since Applicant has no debt from his house foreclosure, I find for Applicant on SOR 1.e. Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration Mitigating Conditions under 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;

(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible sources, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control; and

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

The mitigating conditions do not apply. The debts pertain to a tax lien, a judgment on a credit account, medical debts, and a foreclosure. Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. The debts are normal ordinary financial matters. Applicant claims that his financial problems commenced when he was placed on disability. He did not establish that the loss of income because of disability prohibited him from attempting to resolve his financial problems. Applicant has not established that the conditions he claims caused his financial problems were not within his control. Applicant did not provide information concerning financial counseling.

Mitigating condition AG ¶ 20(d) does not apply. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant is not required to be debt-free nor must his plan require paying off all debts immediately or simultaneously. All that is required is that Applicant act responsibly given his circumstances. Applicant must establish that he has a reasonable plan to resolve financial problems, and that he has taken significant action to implement that plan. Applicant's plan must evidence a systematic method of handling debts, and Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner.

Applicant claims that he contacted some creditors to establish payments plans. However, he presented no documentation of any plans he is negotiating or finalizing. He presented no documents to show any present payments made to creditors. He has not established a track record of paying his debts in a timely manner and acting in a financially responsible manner. His lack of responsible financial conduct is likely to continue. In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, he failed to supplement the record with relevant and material facts regarding his financial circumstances, to adequately articulate his positions, and provide facts to mitigate the financial security concerns. In short, the file lacks sufficient

evidence provided by Applicant to establish that he paid, arranged to pay, settled, compromised, disputed, or otherwise resolved his delinquent accounts. The record lacks corroborating or substantial document and details to explain his finances.

Applicant has not met his burden to establish his good-faith efforts to resolve his remaining debts. He has not established that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his financial obligations. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is obvious that Applicant's financial problems are not under control, and that Applicant is not managing his personal financial obligations reasonably and responsibly. There is evidence of a lack of responsible behavior, good judgment, and reliable conduct and reasonable actions by Applicant towards his finances. His failure to appropriately manage his finances, and his lack of action to resolve financial issues, are strong indications that he may not adequately protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 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 considered Applicant's four years of commendable active service in the Navy. I considered that Applicant was successfully eligible for access to classified information in the past. Applicant has not established an adequate plan to resolve his delinquent debts. Applicant has not presented sufficient information to establish that he acted reasonably and responsibly towards his finances under the circumstances. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that

Applicant has not mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is denied.

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.d:	Against Applicant
Subparagraph 1.e:	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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge