



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



In the matter of:)
)
) ISCR Case: 15-05632
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

02/16/2017

Decision

WHITE, David M., Administrative Judge:

Applicant borrowed \$14,000 from a relative to repay some delinquent debts, but remains unable or unwilling to repay that loan and other delinquencies exceeding \$5,000. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On December 2, 2014, Applicant submitted a security clearance application (SF-86). On February 23, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken under Executive Order 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 March 9, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On April 8, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on April 11, 2016, and received by him on April 15, 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 his receipt of the FORM. He did not file any objection to the Government's FORM. However, he submitted additional evidence and comments in response thereto, which were received by the Defense Office of Hearings and Appeals (DOHA) on April 25, 2016. Department Counsel had no objection to the admissibility into evidence of this response to the FORM, which is marked Applicant's Exhibit (AE) A. DOHA assigned the case to me on November 1, 2016. Items 1 through 5 and AE A are admitted into evidence.

Findings of Fact

In his answer to the SOR, Applicant admitted 13 of the 14 allegations concerning his delinquent debts. He denied the allegation in SOR ¶ 1.m, and claimed that he had paid that debt before issuance of the SOR. His admissions to the 13 other allegations are incorporated into these findings of fact.

Applicant is 35 years old and recently divorced. He incurred a substantial amount of deferred student loan debt to attend community college classes from 2009 to present, but has not completed a degree. He accepted a job offer from a Federal contractor in November 2014, for a position that required him to obtain a security clearance. Prior to being offered this position, he held several jobs with different private employers, and experienced periods of unemployment from August 2012 to May 2013 (after being fired from a job), and September 2009 to January 2010 (after being laid off due to lack of work from a job that he started in January 2007). (Item 2; Item 3.)

Based on credit bureau reports (CBRs) from December 2014 and January 2016, the SOR alleged 14 delinquent debts, which totaled \$19,887. The debts became delinquent between 2011 and 2014. (Items 1, 4, 5.) Applicant correctly asserted that the allegations in SOR ¶¶ 1.g and 1.j concern the same credit card debt, reported at different times in different amounts by the collection agency. The credit report entries reflect the same underlying information about that account. (Item 2; Item 4; Item 5.)

On February 29, 2016, Applicant deposited \$14,000 that he borrowed from a relative to pay debts into his bank account. Between March 4 and March 14, 2016, payments from that account, totaling \$13,158, were disbursed to repay or settle the seven debts, totaling \$14,068, which were listed in SOR ¶¶ 1.a, 1.c, 1.e, 1.g, 1.i, 1.k, and 1.n. Although those particular debts are now resolved, Applicant has no apparent means to fulfill his stated intention to repay the \$14,000 loan to his relative. (Item 2; AE A.)

Applicant admitted that he has not made any repayments toward the five delinquent debts alleged in SOR ¶¶ 1.b, 1.d, 1.f, 1.h, and 1.i, which total \$5,002. He said, without providing documentation, that the creditor holding the \$173 collection account for cable services, alleged in SOR ¶ 1.i, had closed the account and would not accept payment. He further said, without proof, that he had paid the \$66 cable bill alleged in SOR ¶ 1.m. However, that debt still shows as an outstanding collection account on page 9 of the Experian credit report he submitted in his response to the FORM. (Item 2; AE A.)

Applicant offered no evidence of financial counseling, a workable budget, or other documentation to show that he has started living within his means and meeting his financial obligations. He offered no character references or evidence concerning the quality of his work performance.

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 has a history of delinquent debts. From 2011 to 2014, he accumulated 13 delinquent accounts totaling over \$19,000. The fact that he borrowed \$14,000 from a relative to repay some of those debts, without any apparent means to repay that loan, did not reduce his financial overextension. That action merely changed the identities of

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

his creditors from commercial institutions to a family member toward whom Applicant is more personally obligated. His financial history and ongoing pattern of inability or unwillingness to pay his debts raise security concerns under the above disqualifying conditions, and shift 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 ongoing 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 numerous, ongoing, and arose from normal life circumstances. They continue to reflect unreliability and poor judgment. He provided insufficient evidence that his divorce or periods of unemployment arose from circumstances beyond his control, or that he attempted to responsibly manage his debts while they were accumulating. 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 problems are under control. Thus, he failed to establish mitigation under AG ¶ 20(c). He submitted evidence that he resolved seven of the SOR-listed debts, indicating a good-faith effort to repay them. However, he did so by using funds he borrowed from a relative and has no apparent means to repay. He further admitted his present inability or unwillingness to resolve the remaining alleged debts, which total more than \$5,000. Little significant mitigation was established under AG ¶ 20(d) given these circumstances. Applicant disputed that he still owed the \$66 debt alleged in SOR ¶ 1.m, but provided no substantiating documentation. 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 choices and conduct that underlie the security concerns expressed in the SOR. The alleged delinquent debts arose between 2011 and 2014. He resolved 7 of the 13 debts, but only by incurring \$14,000 in new debt to a relative, with no apparent means to repay it. He did not present evidence of credit or financial counseling, a budget, or a plan for addressing the remaining debts that might demonstrate rehabilitation or behavioral change. The likelihood that similar problems will continue remains a security issue, such that the potential for pressure, coercion, or duress is undiminished. Overall, the record evidence leaves me with doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising under the guideline for 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

Subparagraphs 1.a through 1.n:

Against Applicant²

² The specific debts alleged in SOR ¶¶ 1.a, 1.c, 1.e, 1.g, 1.i, 1.j, 1.k, and 1.n are resolved, but Applicant admitted them and still owes the \$14,000 he used to repay those debts to his relative. These circumstances do not support findings for Applicant concerning those debts, or Paragraph 1 in general.

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.

DAVID M. WHITE
Administrative Judge