



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-05739

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel

For Applicant: Susan B. Martin, Esquire

05/31/2017

Decision

HOWE, Philip S., Administrative Judge:

On January 20, 2015, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On March 8, 2016, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on March 17, 2016. He answered the SOR in writing through counsel on June 8, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 23, 2016. The case was assigned to another administrative judge on June 30, 2016, and later reassigned to me on October 14, 2016. DOHA issued a Notice of Hearing on November 21, 2016, and I convened the hearing as scheduled on December 21, 2016. The

Government offered Exhibits 1 through 5, which were received without objection. Applicant testified and submitted Exhibits A through E, without objection. DOHA received the transcript of the hearing (Tr.) on January 7, 2017. I granted Applicant's request to keep the record open until January 31, 2017, to submit additional matters. On January 30, 2017, he submitted Exhibits F to N, without objection. The record closed on January 31, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted all the allegations in the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 42 years old, divorced, and has two children. He works for a defense contractor with an income of \$48,000 annually. He also has a second job as a property manager earning about \$650 monthly for about nine months while the owner is deployed in the military. He started that job in November 2016. Applicant has had a security clearance since 2007. (Tr. 19, 28, 31, 35, 51; Exhibit 1)

Applicant has 33 delinquent debts listed in the SOR. The debts total \$16,657. These include 29 delinquent medical debts totaling \$10,048. He established a medical payment plan for some of those debts and future obligations. Applicant testified he entered into a debt payment plan with a non-profit debt counseling firm for 25 of those debts (Subparagraphs 1.b, 1.c, 1.d, 1.f, 1.g-1.j, 1.l -1.n, 1.p, 1.r, 1.t-1.cc, 1.gg, and 1.hh), totaling \$6,304. He pays into the plan \$130 on the 20th of each month by automatic deduction from his bank account. He had made eight payments as of the date of the hearing. (Tr.15, 21, 22, 57; Exhibits 2-4, A-L)

Meanwhile, there are five debts of \$100 or under in amount and they are to be paid by Applicant directly. These debts are 1.e (\$62), 1.k (\$52), 1.o (\$70), 1.s (\$100), and 1.ff (\$53), which totals \$323. He admitted at the hearing he has not paid these five debts. They are not resolved. However, he put two other debts under \$100 (Subparagraphs 1.bb (\$32) and 1.cc (\$91)) in the above-discussed debt payment plan. (Tr. 15, 17, 21-26, 36, 37, 50, 57; Exhibits 2-5, A-N)

Two debts are for credit cards (Subparagraphs 1.q and 1.dd) totaling \$1,474. He claims that those debts are uncollectible under state law. He submitted a letter from the creditor stating it will not be collecting the debts. (Tr. 15, 17, 21-26, 36, 37, 50; Exhibits 2-5, A-N)

One debt is owed to a lender for a repossessed automobile for \$8,547 that occurred in December 2007 (Subparagraph 1.ee). He has never repaid it and is disputing it. He purchased the vehicle after his 2007 bankruptcy was discharged. Applicant intends to assert the statute of limitations as a defense to collection. He is disputing it according to Exhibit D but he did not submit a document showing the terms

of the dispute or action taken. It is not resolved. (Tr. 15, 17, 21-26, 36, 37, 50; Exhibits 2-5, A-N)

He has one allegation that he filed a Chapter 7 bankruptcy in March 2007 that was discharged in August 2007 (Subparagraph 1.a). (Tr. 15, 17, 21-26, 36, 37, 50; Exhibits 2-5, A-N)

Applicant's admission of all the alleged debts, and his 2007 Chapter 7 bankruptcy, also includes the information that many of the medical debts are for his former wife's treatments and possibly some for his two children. He and his wife have not lived together since 2003, despite their subsequent divorce occurring in 2014. (Tr. 35; Exhibits 1, 2)

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 are useful 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 (AG ¶ 2(a)). 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under 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 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 Executive Order 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 or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated \$16,667 in delinquent debt from 2007 to the present time that remains unpaid. Applicant has 33 delinquent debts listed in the SOR plus a Chapter 7 bankruptcy filed in 2007. The evidence raises all of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three conditions may be 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;

(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; and

(f) the affluence resulted from a legal source of income.

There is no persuasive evidence from Applicant that his divorce in 2014 adversely affected his ability to pay his debts and that he acted responsibly under the circumstances. The debts accumulated after his 2007 bankruptcy, showing Applicant cannot manage his money to avoid accumulating debts. AG ¶ 20 (b) is not established.

Applicant enrolled in a debt management program and has a substantial part of his delinquent debts in the repayment program. Therefore, part of his debts are being resolved and are under control. AG ¶ 20 (c) is established.

Applicant is paying some of his debts in an orderly manner through a repayment plan. He did not arrange the payment plan until after the SOR was issued in March 2016. He is paying those 25 debts on the installment plan basis. The creditor absolved him from two other debts owed on a credit card his former wife used. AG ¶ 20 (d) applies to the debts in the repayment plan and the credit card.

However, he has not paid four other small debts he testified he would pay. According to his testimony, but unsupported by any documents, he is disputing the \$8,547 owed on a repossessed vehicle he purchased after his 2007 bankruptcy was discharged. He did not establish a reasonable basis to dispute the legitimacy of the debt, other than he has not paid it and hopes to apply the state statute of limitations to the debt so he can avoid having to repay it. AG ¶ 20 (e) is not established. The largest debt is not being resolved, nor are the four small debts totaling \$232.

The remaining two mitigating conditions, AG ¶ 20 (a) and (f), do 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 an applicant's conduct and all the 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant filed Chapter 7 bankruptcy and was discharged in 2007. He then incurred other debts, mainly medical obligations for treatments provided his now ex-wife, and for a repossessed vehicle. It was only after being confronted with the SOR in March 2016 that he started to take action to resolve his delinquent debts. Applicant placed almost 30 of his 33 delinquent debts in a debt repayment plan, on which he had made only eight payments by the time of the hearing. His delinquent debts accumulated over nine years with no apparent attempt to pay them in a regular manner. It is likely this behavior will continue or recur in the future based on his previous bankruptcy and unpaid debts since 2007.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his 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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraphs 1.l -1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	Against Applicant
Subparagraphs 1.t-1.z:	For Applicant
Subparagraphs 1.aa-1.cc:	For Applicant
Subparagraph 1.dd:	For Applicant
Subparagraph 1.gg:	For Applicant
Subparagraph 1.hh:	For Applicant

Subparagraph 1. ee:

Against Applicant

Subparagraph 1. ff:

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.

PHILIP S. HOWE
Administrative Judge