



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



In the matter of:

ISCR Case No. 15-06236

Applicant for Security Clearance

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

04/25/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant failed to demonstrate that he has taken responsible action to resolve his delinquent debts. He has not mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On April 15, 2016, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on May 12, 2016, and elected to have his case decided on the written record in lieu of a hearing. On June 5, 2016, Department Counsel submitted the Government's file of relevant material (FORM). The Government submitted documents identified as Items 1 through 5. The FORM was mailed to Applicant, and he

received it on June 28, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM or object to the Government's evidence. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 5 are admitted into evidence without objection. The case was assigned to me on April 10, 2017.

Findings of Fact

Applicant admitted SOR ¶¶ 1.b, 1.c, 1.d, and 1.e. He denied SOR ¶¶ 1.a, 1.f, 1.g and 1.h. His admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 30 years old. He has a high school diploma and attended one year of college. He is married and has no children. Since December 2010, he has worked as a quality control inspector in the defense industry. He has worked for his current employer since February 2015.¹

Applicant completed a security clearance application (SCA) in March 2015. He listed some delinquent debts, which he attributed to being laid off. In his SCA and his background interview, he details periods of unemployment from January to April 2010, and again from October to December 2010.²

The SOR alleges eight delinquent debts totaling about \$29,097, almost all of which are consumer or credit card debts. All of the SOR debts are listed on Applicant's credit reports.³

Applicant states in his Answer that he accumulated the debts when he was younger. He says he has worked to settle his debts one at a time and to improve his credit. He says he has paid his newer accounts on time and his credit score has improved. He provides no supporting documentation about the status of any SOR debt, or about the state of his finances generally. He provides no documentation about his monthly income or expenses, his efforts to repay or resolve his debts, or any credit counseling.⁴

The status of the SOR debts is as follows:

The debts in SOR ¶¶ 1.a (a \$3,323 charge-off) and 1.c (a \$9,275 judgment) are to the same creditor. Applicant admits the charged-off account but denies the judgment, stating that they are related, since he had only one account with the creditor. He disclosed

¹ Item 2.

² Items 2, 3.

³ Items 3, 4, 5.

⁴ Item 1.

the charged-off debt, relating to an auto loan, on his SCA. Both accounts are separately listed on all credit reports in the record, and both accounts are unresolved.⁵ Applicant has not established with appropriate documentation that the accounts are duplicates.

Applicant admits SOR debt ¶ 1.b (\$4,929), and indicates he is attempting to settle it. He states he is unsure who to contact to settle SOR debts ¶¶ 1.d (2,758) and 1.e (\$382), both well-known credit card companies.⁶ These debts remain unresolved.

SOR debts ¶¶ 1.f and 1.g are both \$120 collection debts issued against Applicant by a county court. He denies the debts in his interview and his answer. Both are listed on Applicant's April 2015 credit report as having been reported the month before.⁷ Applicant has not established with appropriate documentation that he is not responsible for the accounts.

Applicant denies SOR debt ¶ 1.h (\$8,190), claiming that he settled it in February 2015. He provides no supporting documentation. The debt is listed on all of the Government's credit reports as a charged-off debt that has been transferred or sold, with no balance owed.⁸

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 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 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

⁵ Items 1, 2, 4, 5.

⁶ Item 1.

⁷ Items 1, 3, 4, 5.

⁸ Items 3, 4, 5.

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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to 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 that an applicant may deliberately or inadvertently fail to 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 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.

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.⁹

⁹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has outstanding delinquent debts totaling about \$29,000 that he began accumulating in 2010 after a period of unemployment. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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.

Applicant did not provide any documentary evidence of his efforts to pay or otherwise resolve his debts. He provided no evidence of his current financial situation. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His delinquent debts continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's debts began after a period of unemployment in 2010. This was a circumstance beyond his control that impacted his finances. Since then, however, he has been gainfully employed in the defense industry. For the full application of AG ¶ 20(b),

Applicant must provide evidence that he acted responsibly under the circumstances. Applicant has not done this. AG ¶ 20(b) does not apply.

Applicant provides no information about any credit counseling he has received, or about his monthly income or expenses or his ability to pay his debts. Without additional evidence, there are not clear indications that Applicant's financial problems are under control. AG ¶ 20(c) does not apply.

Applicant indicates that he hopes to settle his debts but he has not shown that he has taken affirmative steps to do so. His debts remain unresolved. Applicant has not established a good-faith effort to repay his creditors or resolve his debts. AG ¶ 20(d) does not apply.

SOR debt ¶ 1.h is listed on Applicant's credit reports as a charged-off debt with zero balance owed. AG ¶ 20(e) applies to this debt. Applicant denied other debts but did not provide documentary evidence to substantiate the basis of the dispute or actions to resolve them. AG ¶ 20(e) does not otherwise 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 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.

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 is 30 years old. His unemployment in 2010 had a negative impact on his finances. However, that period was seven years ago. Despite being gainfully employed, Applicant has not shown that he has taken responsibility for his debts, most of which

remain outstanding. Applicant does not have a reliable financial track record at this time. His finances remain a security concern. He has failed to meet his burden of persuasion. 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 security concerns arising under Guideline F, financial considerations.

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.g:	Against Applicant
Subparagraph 1.h:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge