



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 15-06641
)
 Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

05/30/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns stemming from his financial problems. Eligibility for access to classified information is denied.

Statement of the Case

On March 4, 2016, the Department of Defense (DOD) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on April 1, 2016, and he elected to have the case decided on the written record in lieu of a hearing. On May 12, 2016, Department Counsel submitted her file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on May 24, 2016. He was afforded an opportunity to respond to the FORM within 30 days of its receipt and to file objections

and submit material to refute, extenuate, or mitigate the security concerns. He did not respond to the FORM. The case was assigned to me on April 7, 2017.

Procedural Issues

In the FORM, Department Counsel references FORM Items 1-6.¹ FORM Item 6 consists of an unauthenticated summary of an interview with a government investigator conducted on July 11, 2013. In the FORM, Department Counsel advised Applicant that he could object to FORM Item 6 and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be constituted as a waiver, and the evidence would be considered by me. Applicant did not respond to the FORM, and he raised no objections. Given Department Counsel's advisement and Applicant's work experience, I find his waiver to be knowing and intelligent.² FORM Items 3-6 are admitted into evidence as Government Exhibits 3-6, without objection.

Findings of Fact

The SOR alleges a deficiency balance on a mortgage-loan account (SOR ¶ 1.a.) and three collection accounts (SOR ¶¶ 1.b.-1.d.). Applicant admitted the debts alleged in SOR ¶¶ 1.a., 1.c., and 1.d., and he denied the debt alleged in SOR ¶ 1.b. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 40 years old. He attained an associate's degree in 1997. Since 2003, he has been employed full time by a DOD contractor.³

Applicant's June 2013 and April 2015 credit reports establish the four alleged debts. In about 2010, Applicant's mortgage-loan account was foreclosed upon and the property sold. The deficiency balance on the mortgage-loan account was placed for collection (SOR ¶ 1.a.). During his July 2013 security interview and in his response to the SOR, he claimed to have attempted to settle this debt; however, he has provided no documentation of his settlement efforts or of any payments.⁴

The other three delinquent accounts (SOR ¶¶ 1.b.-1.d.) were placed for collection between 2011 and 2014. In his response to the SOR, Applicant claimed to have paid

¹ FORM Items 1 and 2 consist of the SOR and Applicant's response to the SOR, which are pleadings and are entered into the administrative record.

² See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016) (Applicant's waiver of the authentication element must be knowing and intelligent.). See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.")

³ GE 3.

⁴ GE 4; GE 5; GE 6; Response to the SOR.

one collection account (SOR ¶ 1.c.); however, he provided no corroborating documentation. He denied owing the debt in SOR ¶ 1.b. because it was not listed on his credit report, and he claimed that the debt in SOR ¶ 1.d. is not collectable. He provided no documentation to corroborate his claims.⁵

During his July 2013 security interview, Applicant attributed his financial problems to circumstances beyond his control, yet he provided no further explanation or information as to what circumstances were involved. He provided no documentation of any circumstances contributing to his delinquent debts.⁶

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 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 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."

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 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

⁵ Response to the SOR.

⁶ GE 6.

extrapolation of 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:

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 notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant’s four delinquent debts total approximately \$68,070. These debts became delinquent between 2010 and 2014. The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁷ Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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

⁷ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.).

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 struggles date from 2010 and are ongoing. There is no documentary evidence of any steps taken to resolve the four alleged debts. Because Applicant has provided no explanation as to why these debts became delinquent, there is no evidence to support a conclusion that such circumstances are unlikely to recur. AG ¶ 20(a) does not apply.

The application of AG ¶ 20(b) requires both that (1) Applicant's financial indebtedness resulted from circumstances beyond his control, and (2) Applicant acted responsibly under the circumstances. As to the first element of AG ¶ 20(b), Applicant has not provided any evidence of any circumstances beyond his control that contributed to his financial problems.

AG ¶ 20(b) also requires that an applicant act responsibly under the circumstances.⁸ Applicant has not provided any documentary evidence of a debt-resolution plan or steps taken in furtherance of that plan. There is insufficient evidence to conclude that Applicant acted responsibly to address his delinquent debts or to develop and implement a reasonable debt-repayment plan. AG ¶ 20(b) does not apply.

There is no evidence that Applicant has sought credit counseling. Nor is there evidence of his monthly income or expenses to establish that his financial problems are under control. AG ¶ 20(c) does not apply.

The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."⁹ There is no documentary evidence of any payments or debt-resolution efforts on the alleged debts. AG ¶ 20(d) does not apply.

⁸ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) ("All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan.").

⁹ See ISCR Case No. 08-12184 at 10 (App. Bd. Jan. 7, 2010) (Good-faith effort to resolve debts must be evidenced by a meaningful track record of repayment).

Applicant denied the debt alleged in SOR ¶ 1.b. due to its absence on his credit report. The removal or deletion of an account from a credit report is not evidence of debt payment or resolution.¹⁰ He also contends that the debt in SOR ¶ 1.d. is uncollectable due to the statute of limitations. The security concerns stemming from a delinquent account do not expire when it is no longer collectable. Furthermore, Applicant has not demonstrated a reasonable basis to dispute the legitimacy of these debts. AG ¶ 20(e) does not apply.

Absent substantial evidence of debt-resolution efforts and financial responsibility, I find that security concerns about Applicant's financial problems remain.

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 Guidelines F and the factors in AG ¶ 2(c) in this whole-person analysis.

Applicant has provided no explanation as to the circumstances that triggered his financial problems, and he has not provided any documentation demonstrating any debt-resolution efforts or that he has acted responsibly with his finances. As a result, the totality of the record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

¹⁰ See ISCR Case No. 02-14950 at 4 (App. Bd. May 15, 2003) ("The removal of those debts from his credit report does not make them disappear as if they never existed or preclude the Judge from considering other record evidence that shows those debts exist. The security significance of Applicant's financial history doesn't turn on whether Applicant's debts could or could not be legally listed on a credit report after the passage of seven years.").

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
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Subparagraphs 1.a.-1.d.:	Against Applicant
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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.

Eric H. Borgstrom
Administrative Judge