



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



In the matter of:)
)
) ISCR Case No.15-07146
)
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

06/02/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated April 18, 2016. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated June 22, 2016.¹ Applicant received the FORM on July 14, 2016. Applicant did not respond to the FORM. The case was assigned to me on May 24, 2017. Based on a review of the case file, eligibility for access to classified information is denied.

¹The Government submitted six items for the record.

Findings of Fact

In his answer to the SOR, Applicant admitted the four allegations, and provided explanations for the allegations under Guideline F (Financial Considerations). (Item 2)

Applicant is a 45-year-old employee of a defense contractor. He served on active duty in the military (U.S. Navy) from 1989 to 2009, receiving an honorable discharge. He is divorced and has one minor child. Applicant has worked for his current employer since 2010 as an aircraft mechanic. He completed a security clearance application in 2015, and has held a security clearance since 2003. (Item 3)

Financial Considerations

The SOR alleges four delinquent debts that total approximately \$16,420. (Item 1) The items are a collection account in the amount of \$15,965; a medical account in the amount of \$90; a collection account in the amount of \$115; and a collection account in the amount of \$250. (Item 1)

In his answer to the SOR, Applicant stated that his small debts have been paid. (Item 2) Applicant was unemployed from September 2009 until August 2010. (Item 3) He supported himself with unemployment benefits and his military pension. He also noted on his security clearance application that he was looking for employment after he left the military in 2009 and was unemployed from February 2009 to April 27, 2009. He disclosed his financial issues in his 2015 security clearance application and stated that he was working with a debt-relief company on his largest debt (SOR 1.a) and was working on a payment plan. (Item 3)

In his 2015 investigative interview, Applicant said he owned a revolving credit account that was opened in the early 2000s, and became delinquent when he was unemployed in 2009. He started to work with a debt-relief company and made monthly payments of \$320 to the service, but he stated that the company could not negotiate with the creditor on the delinquent debt and the amount of debt is unresolved. (Item 4) Applicant stated that he would resolve the account listed in SOR 1.a by December 2015.

As to SOR allegation 1.a, Applicant's assertion that he made a payment of \$200 on May 27, 2016, is not confirmed by any documentation. His latest credit report confirms the debt.

As to SOR allegation 1.b, Applicant admitted to the medical account, which shows a balance of \$90. In his response to the SOR, he stated that he paid the account in full and it has a zero balance. He did not provide proof of payment, and his 2016 credit report shows an unpaid account. (Item 5)

As to SOR allegation 1.c, Applicant reported in his answer that the collection account with a balance of \$115 was paid in May 2016. He did not provide proof of payment. It does not appear on his latest credit report.

As to SOR allegation 1.d, Applicant admitted the balance, but stated that he paid \$250 in May 2016. He did not provide any documentation. It does not appear on his latest credit report. (Item 5)

Applicant's credit report, obtained in 2016, reflects that the majority of his accounts are noted "pays as agreed." However, he noted that he made a \$200 payment on the largest debt in May 2016 and the debt became delinquent in 2009. He has been working since 2010. Thus, it is not clear as to whether any other efforts to make payments on this account have occurred.

There is nothing in the record that shows Applicant's current financial earnings or any attempts to obtain financial counseling, except through the debt-relief company. He did not respond to the FORM to supplement the record.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

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

The Government produced credible evidence to establish that Applicant had delinquent debts. The credit reports confirm the debts. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate the security concerns:

- (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 acknowledged his delinquent debts. He was unemployed after retiring from the military and at another period in time. He stated that he used a debt-relief company to help him with his finances. There is no information that he made payments before the May 2016 payment, which is not documented. He appears to have paid some smaller debts. He receives credit for any financial counseling that he received from the debt-relief company. However, although conditions beyond his control caused the debt, from the information in the record, I do not find that he acted responsibly. The payment of \$200 made in 2016 was not documented, and in his interview he stated he would

have this debt paid by 2015. Applicant receives partial credit under AG 20(b). He receives credit for the counseling under 20(c) and partial credit under 20(d).

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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. I have noted Applicant's service in the military, receiving an honorable discharge. He has had a clearance since 2003. He is 45 years old. He has a record of paying his accounts. However, his delinquent debt from 2009 is still unresolved and there is not clear information in the record that he is on a payment plan and making regular payments. He was unemployed, but he has been employed with a company since 2010. He did not supplement the record by responding to the FORM. Applicant has not met his burden of proof in this case. Clearance 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

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 a security clearance. Clearance is denied.

NOREEN A. LYNCH
Administrative Judge