



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 16-02497
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

11/28/2017

Decision

HOGAN, Erin C., Administrative Judge:

On December 22, 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) effective within the DOD after September 1, 2006. The AGs implemented on September 1, 2006, have been superceded by AGs implemented by DOD on June 8, 2017. The June 8, 2017 AGs will be used to decide this case. If the September 1, 2006 AGs were applied, the outcome of this case would be the same.

On January 13, 2017, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on February 7, 2017. Applicant received the FORM on February 10, 2017. Applicant had 30 days to submit a response to the FORM. He did not submit a response to the FORM. On April 3, 2017, the FORM was forwarded to the Hearing Office and assigned to me on October 1, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is an employee of a DOD contractor seeking a security clearance. He has been employed with his current employer since September 2015. He has a high school diploma and some college credit. He is divorced and has a 21-year-old daughter. He served two periods of active duty in the United States Army from April 2000 to April 2004, and June 2010 to August 2014. He received an Honorable discharge after both periods of active duty service. He has been granted a security clearance in the past. (Item 3)

On October 20, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (Item 3) He disclosed numerous delinquent accounts, including the following accounts alleged in the SOR: a \$14,101 car loan that was charged off in May 2014 (SOR ¶ 1.a: Item 4 at 3: Item 5 at 1); a \$6,809 car loan account that was charged off in February 2013 (SOR ¶ 1.b: Item 4 at 3: Item 5 at 2); a \$6,263 debt resulting from a car repossession in April 2014 (SOR ¶ 1.c: Item 4 at 7: Item 5 at 2); three delinquent student loan accounts placed for collection in the amounts of \$1,069; \$535; and \$244 (SOR ¶¶ 1.d, 1.e, and 1.f: Item 4 at 3: Item 5 at 2); a \$1,105 debt placed for collection (SOR ¶ 1.g: Item 4 at 4) a \$4,375 debt placed for collection in October 2012 (SOR ¶ 1.h: Item 4 at 14), and a \$135 medical account placed for collection in May 2015. (SOR ¶ 1.i: Item 4 at 14). The total amount of the delinquent debt is \$34,636.

Applicant listed on his e-QIP application that he was unemployed between August 2014 and September 2015, and between April 2004 to June 2004. In the additional comments section at the end of the application, Applicant states:

As far as my financial record, this has happened over a period of time. I was married with a growing family on one pay check in the army. We tried our best to keep things balanced but things got behind. I have been struggling trying to find employ since getting out of the army in 2014. I have been homeless two times or living with friends. Now that I have this job I currently making plans and starting on clearing my debt. This will take time but I will do what I can to get back in good standing.

In his response to the SOR, Applicant admits all allegations in SOR without additional explanations. He did not respond to the FORM. Applicant did not provide any information about whether he had a plan in place to resolve his delinquent debts. He provided no receipts indicating whether any respective debts were paid and no evidence of payment plans with any of the creditors alleged in the SOR. He did not provide information on his financial status, such as a monthly budget which shows his monthly income and monthly expenses. There is no indication that he attended financial counseling.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), 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 for national security eligibility 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.

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 applicant or proven by Department Counsel. . . ." The applicant 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 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 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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

All of the above disqualifying conditions apply because Applicant incurred nine delinquent accounts with an approximate total of \$34,636.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The concern under Financial Considerations is broader than the possibility that a person might knowingly compromise classified information to obtain money or

something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities.

The Government's substantial evidence and Applicant's admissions raised security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit financial counseling service, and there are clear indications the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(b) partially applies because Applicant was unemployed for a year before starting his current job in September 2015. I do not have enough information to conclude that Applicant behaved responsibly under the circumstances so this mitigating condition is given less weight.

None of the remaining mitigating conditions apply. Applicant acknowledges his financial problems, but has not demonstrated a good-faith effort to resolve his delinquent debts. If Applicant develops of plan to pay his delinquent debts, attends financial counseling, and follows a budget, he may mitigate the concerns raised under financial considerations. At this time, he has not met his burden of proof to mitigate the security concerns.

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(d):

(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 Applicant's work for a DoD contractor since September 2015. I considered Applicant's honorable service in the United States Army. I considered his truthfulness in disclosing his debts on his e-QIP application. However, he did not provide proof that he was actively taking steps to resolve his delinquent accounts now that he was employed full-time. The security concerns raised under financial considerations are not mitigated.

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.i:	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 interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge