



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



In the matter of:)
)
) ISCR Case No. 17-00112
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

01/11/2018

Decision

CREAN, Thomas M., Administrative Judge:

Applicant did not provide sufficient documentation to mitigate financial considerations security concerns under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On October 7, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on August 8, 2016. (Item 4, Personal Subject Interview (PSI)) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance.

On March 14, 2017, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in the DOD on September 1, 2006. On June 8, 2017, new AGs were implemented and are effective for decisions issued after that date.¹

Applicant answered the SOR on April 5, 2017, admitting five and denying five of the ten allegations. He requested a decision based on the written record. (Item 2) Department Counsel submitted the Government's written case on June 2, 2017. (Item 7) Applicant received a complete file of relevant material (FORM) on June 9, 2017. He was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not respond to the FORM. The case was assigned to me on October 23, 2017.

Procedural Issue

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM investigator (Item 3) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the PSI summary. Applicant did not respond to the FORM so he did not raise any objection to the PSI. Since he did not raise any objection to consideration of the PSI, I will consider information in the PSI in my decision.

Findings of Fact

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 57 years old. He graduated from high school in June 1980, and entered active duty in the Navy in August 1980. He served on active duty until he retired with an honorable discharge in September 2001. He received his bachelor's degree in May 2001, and he has taken some post-college courses. He married in September 1984 and has three grown children.

Since retiring from the Navy, Applicant has been employed by defense contractors. Applicant was an operations coordinator at a shipyard from August 2001 until April 2005. He was a training developer for a contractor from May 2005 until April 2012. He was unemployed from May 2012 until October 2012, when the contractor lost the contract he was working. He collected unemployment compensation while unemployed. He worked for a contractor as an energy manager from October 2012 until April 2013, when the contract he worked terminated because of the sequestering of government funds. He collected unemployment compensation while unemployed. Applicant worked for a contractor from October 2013 until February 2015, as an

¹ I considered the previous AGs, effective September 1, 2006, as well as the new AGs, effective June 8, 2017. My decision would be the same if the case were considered under the previous AGs.

instructional designer. He was terminated in February 2015 because he no longer had the skill set required for the job. He was unemployed until he was hired as a senior systems analyst in September 2015 by his present employer. He received unemployment compensation while not employed. He has been continuously eligible for access to classified information since January 1981 when he entered active duty with the Navy. There are no indications of any security violations. He reported some of his delinquent debts in response to financial questions on his e-QIP. (Item 3, e-QIP, dated October 7, 2015; Item 4, PSI, dated August 8, 2016)

The SOR alleges and credit reports (Item 5, dated October 16, 2015; Item 6, dated December 8, 2016) confirm the following delinquent debts for Applicant: a credit card account placed for collection for \$2,802 (SOR 1.a); a utility debt for \$519 (SOR 1.b); a telephone bill in collection for \$292 (SOR 1.c); medical debts for \$138 (SOR 1.d), \$90 (SOR 1.e), \$55 (SOR 1.f), \$484 (SOR 1.g); and judgments on credit cards debts in collection for \$7,911 (SOR 1.h), \$8,752 (SOR 1.i), and \$8,252 (SOR 1.j). The total amount of the delinquent debt is approximately \$30,000. Applicant also admitted in the PSI to other debts not listed on the SOR.

Applicant noted in the PSI that his financial situation has not been great because he was laid off three times since 2012. He did not know about many of his delinquent debts including the medical debts and the credit card debts. He did not know about some delinquent debts that were not listed on the SOR. (Item 4)

In his response to the SOR, Applicant raised the 21 months he was unemployed during the period May 2012 until September 2015 as the primary reason for his delinquent debt. He noted that he has been employed full time since September 2015. He reported that he has been working with creditors to establish payment plans to pay off or bring current his debts. Applicant noted he and his wife are also paying defaulted college loans for their daughters that they co-signed. His wife has \$350 taken every two weeks from her pay to pay student loans.

Applicant noted in his SOR response that he has a payment arrangement of \$350 a month for seven months starting April 2017 on the debt at SOR 1.a. He included a letter from the creditor offering three optional payment plans. Applicant indicated he took plan option 2. He expects to pay the debt in full. However, he did not present any documents to show he has a payment plan and that he made payments under the plan. (Item 2, encl. 3)

Applicant claims to have paid the utility debt at SOR 1.b when he moved. He did not present any documents to verify his claim.

Applicant admitted the telephone debt at SOR 1.c. He is waiting for a copy of the credit report to learn the details of the debt. He noted that he is presently a customer of the telephone company and his bill is current. He did not present any documents to verify his assertions. (Item 2 at 3).

Applicant denied the medical debts at SOR 1.d to 1.g. He noted that he has medical insurance coverage under the military medical insurance plan that should have paid his medical debts. He claims that he checked the explanation of benefits (EOB) reports from the military medical program and did not find any outstanding co-pays or debts owed. He did not present any documents to show that the military medical program paid or resolved the debts. Applicant is waiting for a full credit report to learn information to determine if he owes the debts. He did not provide documents to verify any inquiries he made to the military medical program of their efforts to resolve the debts. (Item 2)

Applicant admitted the credit card debts at SOR 1.h, 1.i, and 1.j. He stated he called the collection agencies to make payment arrangements. He did not present any documents to show contact with the collection agencies, any payment arrangements, or payments made towards the debts. He presented a letter from the collection agency for the debt at SOR 1.j offering a payment plan. Applicant did not present documentary proof that he accepted the plan and was making payments on any of the credit card debts. (Item 2) Applicant was advised in the FORM that he had not presented any documentary evidence that there are payment arrangements and that he acted responsibly in regard to the delinquent debts. (Item 7)

In his response to the FORM, Applicant included a letter from his employer's Chief Executive Officer (CEO) and Facility Security Officer (FSO). She noted that Applicant is a dependable and reliable employee who supports the company and the government customer 100%. The CEO also noted that there are no indications that Applicant does not live within his means. The indications that the company sees is that are that he is financially responsible. Applicant is trusted as a professional. There are no indication to doubt his loyalty and maturity. The CEO believes Applicant's financial issues were caused by circumstances beyond his control and that he has taken measures to remediate his finances. She highly recommends that Applicant be granted eligibility for access to classified information. (Item 2, at 10).

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 must be considered 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(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 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 for 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 the applicant may deliberately or inadvertently fail to safeguard 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified and sensitive information)

Analysis

Financial Considerations

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. (AG ¶ 18) An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or 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 meet their financial obligations.

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 required to manage his or her finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Credit reports confirm the SOR delinquent debts. This information is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

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

Applicant's failure to pay debts when employed shows an inability and history of not meeting his financial obligations. Once the Government has established adverse financial issues, the Applicant has the responsibility to refute or mitigate the issue. The available evidence presented by Applicant does not show that he has resolved or is resolving his delinquent debts. I considered the information and documents Applicant provided as mitigation in response to the SOR and FORM.

I considered the following Financial Consideration Mitigating Conditions under AG ¶ 20:

- (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 problems 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 counseling service, and there are clear indications that 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.

The mitigating conditions at AG ¶¶ 20 (a), 20(b), and 20(c) do not apply. Applicant had periods of unemployment followed by periods of employment. He received unemployment compensation while unemployed. He did not establish how

those periods of unemployment or reduced income resulted in his numerous delinquent debts.

Available evidence shows that he has been gainfully employed since September 2015. He did not provide any information on his present finances or salary. He did not show how he managed his finances knowing that he may have periods of unemployment because he worked for defense contractors and he would experience unemployment. His present employment for over two years appears to provide him the ability to pay some of his past due obligations. His lack of action resulted in his debts being numerous, ongoing, recent, and not incurred under circumstances making recurrence unlikely. Applicant presented no evidence that he received financial counseling.

Mitigating condition AG ¶ 20(d) does not apply. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant is not required to be debt-free nor must his plan require paying off all debts immediately or simultaneously. All that is required is that Applicant act responsibly given his circumstances. Applicant must establish that he has a reasonable plan to resolve financial problems, and that he has taken significant action to implement that plan. Applicant's plan must show a systematic method of handling debts, and Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant did not present evidence of debt payment and a good-faith effort to resolve his debts.

Applicant did not provide enough details about what he did to address the debts alleged in the SOR. He did not provide sufficient documentation to show proof of payments, correspondence to or from the creditors to establish maintenance of contact, copies of debt disputes, evidence of attempts to negotiate payment plans, or other evidence of progress or resolution. There is insufficient evidence to establish why Applicant was unable to make greater progress resolving his debts. There is insufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. His lack of reasonable and responsible actions towards his finances is a strong indication that he will not protect and safeguard classified or sensitive information. Under all these circumstances, Applicant failed to mitigate financial security concerns.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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(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 access to classified information must be an overall common-sense 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 considered Applicant's active duty Navy service. I considered the opinion of Applicant's CEO and FSO that he be granted eligibility for access to classified information. Applicant did not provide sufficient credible documentary information to establish that he took reasonable and responsible action to resolve his financial obligations. Applicant did not demonstrate appropriate management of his finances and did not show a record of action to resolve financial issues. Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial situation.

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.j:	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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge