



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



In the matter of:

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ISCR Case No.17-00231

Applicant for Security Clearance

Appearances

For Government: Brittany Muetzel, Esq. Department Counsel

For Applicant: *Pro se*

03/08/2018

Decision

LYNCH, Noreen, A., Administrative Judge:

On March 1, 2017, The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹ 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. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017.²

¹ The Government withdrew Guideline E (Personal Conduct) at the hearing.

² In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. Revised Adjudicative Guidelines became effective June 8, 2017. My decision and formal findings under the revised Guideline F would not be different under the 2006 Guidelines.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on November 9, 2017. The hearing was scheduled for February 8, 2018, but was rescheduled for good cause and held on February 22, 2018. Government Exhibits (GX) 1-5 were admitted into evidence without objection. Applicant testified, but he had no exhibits for the record. The transcripts were received on February 15, 2018, and March 1, 2018. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations at SOR ¶¶ 1.a-m. At the hearing, the Government withdrew the SOR allegation under Guideline E at ¶ 2.a. He provided explanations with his responses.

Applicant is a 41-year-old employee of a defense contractor. He is divorced, but remarried in late 2013. He has four children. He has been with his current employer since 2015. He completed his security clearance application (SCA) in October 2014. He has not previously held a security clearance. (GX 1)

Financial Considerations

The SOR alleges that Applicant has 13 delinquent debts, which total approximately \$129,000. The delinquent debts include charged-off accounts, collection accounts, and medical accounts.

Applicant's answer provided reasons for the delinquent accounts. He acknowledged that his credit was poor and that he had old debts. He separated from his wife in 2009, was divorced in 2013. As a result, the marital home was sold for a lower amount than Applicant purchased. He acknowledged that he had co-signed for a vehicle that his ex-wife drove and a judgment was rendered against him. He credibly stated that his four children were his priority. (Tr. 11) One of his children has special medical needs and Applicant incurred extra costs as a result. Applicant had a stroke in 2010. (Tr. 40) He was unemployed for almost one year from August 2013 to August 2014 (GX 1) and the loss of income was devastating. His current wife does not work outside the home, but attends to the four children. He was emphatic that he has done his best. He paid the rent and kept a roof over his children's heads. Applicant now believes that the only way he can address his delinquent debts is to file for bankruptcy. He also explained that his ex-wife disappeared and no one knows where she is. (Tr. 12) He had to hire a private investigator to serve the divorce papers and has not spoken to her in about nine years.

Applicant disclosed on his SCA that he is being sponsored for a security clearance, but he does not earn any income due to lack of a clearance. He works at a kitchen and bath company six days a week and earns \$22.50 an hour. (Tr. 16) His special needs son receives a supplement in the amount of \$740 which recently started. Applicant had hoped to make payments or arrange for a payment plan for the delinquent debts, but did not have the income. He agreed that in his personal subject interview, he contemplated

making payments on the delinquent debts, but changed his mind due to the frustration of not being able to get any financial help or find his ex-wife. He acknowledged that he has not made any payments on the SOR alleged debts. He noted that at some point in 2009, he contacted some of the creditors but has not done so since that time. Applicant had no records or documentation of any kind concerning actions he may have taken with the creditors. He saw a bankruptcy attorney but does not have the money to pay the initial fee. He believes that he will petition for bankruptcy when he is able to financially. Filing for bankruptcy is not Applicant's first choice to resolve the marital debts, but he does not know what else to do. (Tr. 36) He admitted that he was overwhelmed and just trying to provide for his children and current wife. (Tr. 42)

Applicant still earns about \$22.50 an hour. He has no car payments. He pays his rent and household bills and any extra money is spent on the children's needs. He uses a budget. He has not obtained any financial counseling.

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(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility 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. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ 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 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

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

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

⁸ *Id.*

concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially over-extended is at a 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 describes conditions that could raise a security concern and may be disqualifying: “(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.”

The Government produced credible evidence to establish the delinquent debts and the judgment. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), 19(b), 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit 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.

Applicant has had ongoing financial problems since his separation from his first wife in 2009. He inherited all the marital debts. He remarried in late 2013 and has been providing for four children on one income. One of the children has special needs. Applicant had a stroke and was unemployed for one year, which exacerbated his financial problems. He recently contacted a bankruptcy attorney as he now believes that is the only resolution for him. Earlier, he had thought of making payment plans, but had no extra money. He was quite candid at the hearing about being overwhelmed and frustrated. He had some circumstances that were beyond his control, but he has not been proactive in addressing the delinquent debts. He has provided for his family, and had earlier promised to make payments but a promise to pay is not mitigation. He decided to file for bankruptcy, which is a legal means to resolve debt, but he has not started the process. Applicant has not met his burden of proof in this case. He has not presented information to mitigate security

concerns. AG ¶¶ 20 (a), (b), (c), and (d) do not apply. He has not met his burden to mitigate the security concerns under the financial considerations guideline.

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(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. 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.

Applicant is 41 years old. He is married and has four children. He has no criminal record. He is working six days a week at an hourly job. Since his separation and divorce, he has had an inability to pay his debts. He was unemployed for one year, but was not proactive with resolving his debts. He stated that his priority was providing for his children and current wife. He does not have the income to pay the ongoing debts. At first he thought he could make some payments, but he has not made any payments to the creditors. Applicant now believes that bankruptcy is the solution. He saw one bankruptcy attorney, but he has not yet engaged his services or started the process. He has not provided sufficient evidence that he has acted responsibly in rectifying his financial situation.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the record evidence in the context of the whole person, I conclude that Applicant has not carried his burden. It is not clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E.3 1.25 of the Enclosure 3 of the Directive are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.m:	Against Applicant
Paragraph 2, Guideline E:	WITHDRAWN

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