



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



In the matter of:)
)
) ISCR Case No. 17-00664
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

02/27/2018

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 6, 2016. On April 28, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations.¹

Applicant answered the SOR on July 7, 2017. He elected to have his case decided on the written record in lieu of a hearing. On August 15, 2017, Department Counsel

¹ The action was taken under Executive Order (Exec. Or.) 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 effective within the DOD for SORs issued after September 1, 2006

submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 5. Applicant received the FORM on August 23, 2017. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM.

The case was assigned to me on January 18, 2018. On January 31, 2018, I e-mailed the parties and reopened the record until February 9, 2018 to allow Applicant the opportunity to submit relevant documentation, should he wish to do so.² Applicant did not respond, and the record closed on February 9, 2018. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 6 are admitted into evidence without objection.

On December 10, 2016, the Director of National Intelligence issued new National Security Adjudicative Guidelines (AG). The new AGs are effective June 8, 2017, for all security clearance decisions after that date, including this one, and they supersede the AGs that Applicant received with the SOR.³ Any changes resulting from the implementation of the new AGs did not affect my decision in this case.

Findings of Fact

Applicant admitted SOR ¶¶ 1.c, and 1.e through 1.o. He denied SOR ¶¶ 1.a, 1.b, and 1.d. He provided no explanations and no documents with his Answer. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 37 years old. He has never married, but he has a four-year-old son. He graduated from high school in 1999. He has worked in his current position as a technician for a defense contractor since May 2016. He worked as a shop supervisor for his previous employer from 2004 until February 2016. He was laid off when the employer's largest customer stopped issuing work orders. He was then unemployed for about three months until beginning his current position. (Item 2)

On his SCA, Applicant disclosed a \$49,000 past-due medical bill, and indicated that it related to an expensive surgical procedure. He noted that the matter was being resolved through the health insurance program he had with his previous employer. (Item 2)

The Government's evidence also includes credit reports from June 2016 and August 2017, as well as the summary of Applicant's August 2016 background interview, in which he discussed his delinquent debts. (Items 3, 4, 5)

² Hearing Exhibit I.

³ The new AGs are available on the DOHA website at <http://ogc.osd.mil/doha/DIRECTIVE%202017.pdf>.

The debts in the SOR total about \$59,248. The largest by far is SOR ¶ 1.d, a \$48,660 medical debt placed for collection. Applicant denied that debt, although he disclosed it on his SCA. He also denied SOR ¶¶ 1.a and 1.b, two judgments issued against him in 2016, for \$514 and \$792, respectively. Applicant admitted the remaining debts. All of the debts in the SOR are listed on his June 2016 credit report, Item 4. But for SOR ¶¶ 1.a, 1.c, and 1.f, a \$1,179 debt in collection relating to an athletic club membership, all of the other SOR debts are medical debts. Most of the SOR debts appear only on Item 4, and not on the later credit report, Item 5.

When he answered the SOR, Applicant gave no explanation about any of the debts. He did not provide any basis for any debts he denied. He provided no information about any steps he has taken to settle, resolve, dispute, or otherwise resolve, any of the debts in the SOR. He provided no documentation of the current status of any debt alleged. He also provided no details or documents about his current financial situation, such as his monthly income and expenses or his assets.

Policies

It is well established that no one has a right to a security clearance.⁴ As the Supreme Court noted in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”⁵

The adjudicative 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(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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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, and 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

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”).

⁵ 484 U.S. at 531.

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 an applicant may deliberately or inadvertently fail to 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.

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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁶

AG ¶ 19 provides conditions that could raise security concerns: ¶¶ 19(a) "inability to satisfy debts" and (c) "a history of not meeting financial obligations" are applicable, given the record evidence of Applicant's delinquent debts.

The financial considerations guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 downturn, unexpected medical emergency, a death, divorce or separation, clear

⁶ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(d) the individual initiated and is adhering to 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 has not provided sufficient evidence to apply any of these mitigating conditions. He admitted most of the debts and denied some of them, but offered no explanations or updated information about their current status to show that any of the debts are resolved. He also provided no documents about the current status of his debts, whether admitted or denied. It is reasonable to expect applicants to present documentation about the resolution of specific debts, and Applicant did not do so.⁷ AG ¶ 20(e) does not apply.

The fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt.⁸ Applicant provided insufficient evidence from which to conclude that his financial issues are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. He did not establish that AG ¶ 20(a) should apply.

While almost all of Applicant's debts are medical debts, this alone is not enough to conclude that these debts occurred due to circumstances beyond his control. Moreover, even if that were the case (which it may well be), Applicant did not establish that he undertook reasonable efforts under the circumstances to resolve the debts. AG ¶ 20(b) therefore does not apply. Similarly, he did not establish sufficient good-faith efforts to pay or otherwise resolve his debts. He did not establish that AG ¶ 20(d) should apply.

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

⁷ ISCR Case No. 15-02326 at 2 (App. Bd. Oct. 14, 2016)

⁸ ISCR Case No. 14-03612 at 4 (App. Bd. Aug. 25, 2015)

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(a), 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 Guideline F in my whole-person analysis. Applicant did not provide sufficient documented information that he attempted to resolve his debts in a good-faith, responsible manner. He did not establish that his debts are being resolved or are under control, and did not establish that his debts are unlikely to recur or no longer cast doubt on his current judgment, trustworthiness, and reliability. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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.o:	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 security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge