



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



In the matter of:)
)
) ISCR Case No. 17-01064
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

11/22/2017

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 June 18, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for employment with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on October 1, 2015. (Item 3) 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 May 3, 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 May 27, 2017, admitting eight and deny ten of the allegations of delinquent debt under Guideline F. (Item 1) Department Counsel submitted the Government's written case on June 29, 2017. (Item 6) Applicant received a complete file of relevant material (FORM) on July 9, 2017. He was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant provided a timely respond to the FORM (Item 7). Department Counsel had no objection to the submitted material. (Item 8) 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 raise any objection to the PSI when he responded to the FORM. 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 graduated from high school in May 2009 and has some college credit. He was employed after high school until he entered active duty in the Air Force in February 2010. He served until May 2013 when he received an honorable discharge as an airman (E-3). He was unemployed from May 2013 until May 2014 when he was employed as an animal care officer. He held that job until September 2014 when he was again unemployed until May 2015. In May 2015, he was employed as a truck driver. Available evidence indicates he is still employed in this position. He has been offered a position by a defense contractor as a security officer. The defense contractor is sponsoring him for a security clearance. He married in September 2010 and has two children. He was first eligible for access to classified information when he entered active duty with the Air Force. There are no indications of any security violations. (Item 2, e-QIP, dated June 18, 2015; Item 3, PSI, dated October 1, 2015)

The SOR alleges and credit reports (Item 4, dated June 27, 2015; Item 5, dated February 10, 2017) confirm the following delinquent debts for Applicant: a charged off

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.

car loan for \$5,025 (SOR 1.a); a debt for a broken lease in collection for \$4,397 (SOR 1.b); a personal loan charged off for \$2,024 (SOR 1.c); a store debt in collection for \$1,861 (SOR 1.d); a loan charged off \$1,683 (SOR 1.e); a telephone debt in collection for \$1,605 (SOR 1.f); a broken lease debt to the same landlord as SOR 1.a in collection for \$1,500 (SOR 1.g); a debt to a credit union on a loan charged off for \$1,250 (SOR 1.h); a debt in collection for \$969 (SOR 1.i); a debt to the Veterans Administration in collection for \$930 (SOR 1.j); a debt to a television service provider in collection for \$573 (SOR 1.k); a personal loan debt to the same creditor as SOR 1.c in collection for \$343 (SOR 1.l); a debt to a television service provider in collection for \$317 (SOR 1.m); a debt to a for-profit school charged off for \$203 (SOR 1.n); a loan charged off for \$118 (SOR 1.o); a judgment for the same landlord as listed at SOR 1.b for \$3,165 (SOR 1.p); two judgments for the same store for \$1,310 (SOR 1.q), and \$1,385 (SOR 1.r). The total amount of the delinquent debt is approximately \$24,000.

Applicant agreed in the PSI that he received pay reductions while on active duty because of disciplinary actions. Applicant had some extended periods of unemployment after he left active duty. He did not present any evidence indicating the salary reductions or periods of unemployment contributed to his delinquent debts. He did not show any actions he took to modify his spending to account for his reductions in salary or unemployment. (Item 3, PSI)

Applicant claims that the debts at SOR 1.b, 1.g, and 1.p are the same debt. I find that these debts are the same debt since the debts are to the same apartment complex. I find for Applicant as to SOR 1.b and 1.g. The debt at SOR 1.p is valid since it for a judgment on the debt owed the landlord. Applicant claims the debts at SOR 1.c and 1.l are duplicate debts. I find that the debts are duplicates and find for Applicant as to the debt at SOR 1.l. Applicant claims the debts at SOR 1.q and 1.r are duplicates. I find that the debts are the same debt, and I find for Applicant as to SOR 1.q.

Applicant listed a number of his delinquent debts in response to financial questions on the e-QIP. In the PSI, Applicant agreed that most of the debts were still not paid or resolved. He claimed that some of the debts had been resolved, but he did not provide any documents to verify that the debts were resolved. He claims in his response to the SOR that some of his debts were paid, being paid, settled, or cancelled. He again did not provide any documents to verify his assertions. In the PSI, he characterized his financial situation as "strapped." He stated that he intends to pay all his debts in the future when his finances have stabilized. (Item 3, PSI, at 15-19)

In his response to the FORM, Applicant claims that he had discussions with creditors and that some of his debts are being paid. Applicant included documents to show the debts at SOR 1.f, and the duplicate debts at 1.c and 1.l have been removed from his credit reports. The debts were removed because Applicant disputed them. The debt at SOR 1.j is paid.

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 reduction of pay based on disciplinary actions, his periods of unemployment, and his 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 shows he resolved some but not all of 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;

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The mitigating conditions at AG ¶¶ 20 (a), (b), and (c) do not apply. Applicant had reduction in rank resulting in reduction of income while on active duty because of his own misconduct. He had periods of unemployment followed by periods of employment, but he did not show how those periods of unemployment resulted in his numerous delinquent debts. Available evidence shows that he has been gainfully employed since May 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. His lack of action resulted in his debts being numerous, ongoing and thus 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 presented minimal evidence of debt payments and resolution of only a two debts. Other than these two debts, he did not present information to show 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 Air Force service. 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b – 1.c;	For Applicant
Subparagraphs 1.d – 1.e:	Against Applicant
Subparagraphs 1.f – 1.g:	For Applicant
Subparagraphs 1.h and 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m – 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	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