



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



In the matter of:)
)
) ISCR Case No. 17-01801
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F, Crowley, Esq., Department Counsel
For Applicant: *Pro se*

01/19/2018

Decision

CREAN, Thomas M., Administrative Judge:

Applicant did not provide sufficient documentation to mitigate security concerns for financial considerations under Guideline F, and he did not provide sufficient information to mitigate personal conduct security concerns under Guideline E. Eligibility for access to classified information is denied.

Statement of the Case

On October 12, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on January 18, 2017. (Item 5, 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 June 3, 2017, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F and personal conduct under Guideline E. (Item 1) The action was taken under Executive Order (E.O.)

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 June 23, 2017. He admitted eight and denied eight allegations of delinquent debt under Guideline F. Applicant admitted the two allegations of personal conduct security concern under Guideline E. Applicant elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on July 28, 2017. (Item 9) Applicant received a complete file of relevant material (FORM) on August 4, 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. I was assigned the case on December 12, 2017.

Procedural Issues

Applicant was advised in the FORM that the summary of the PSI (Item 5) 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. Without an objection by Applicant, 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 33 years old. He graduated from high school in May 2003 and has attended courses at a community college. He has been a service desk administrator for a defense contractor since November 2015. Prior to that position, he was employed by a contractor providing care for special-needs people in a school system. He was also self-employed in computer repair, and worked at a restaurant. He has never been married and has no children. This is his first application to be granted eligibility for access to classified information. (Item 3, e-QIP, dated October 12, 2015; Item 5, PSI, dated January 18, 2017)

The SOR alleges, and credit reports (Item 4, dated October 31, 2015; Item 6, dated April 21, 2017) and court records (Item 7 and 8, judgment documents) confirm the following delinquent debts for Applicant: the balance on a car repossession for \$4,787

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.

(SOR 1.a); a cell phone account in collection for \$736 (SOR 1.b); a cable television account in collection for \$623 (SOR 1.c); medical accounts in collection for \$558 (SOR 1.d), \$550 (SOR 1.e), \$527 (SOR 1.f), \$328 (SOR 1.g), \$250 (SOR 1.h), \$135 (SOR 1.i), \$123 (SOR 1.j), and \$114 (SOR 1.k); a judgment for \$6,013 (SOR 1.l); a judgment on a medical account for \$289 (SOR 1.m); a traffic ticket in collection for \$205 (SOR 1.n); a debt to an insurance company for \$160 (SOR 1.o); and a health club account in collection for \$82 (SOR 1.p). The total amount of the delinquent debt is approximately \$15,480. The SOR also lists as personal conduct security concerns job terminations in 2013 (SOR 2.a) and 2009 (SOR 2.b). Applicant admits the debts at SOR 1.b, 1.d, 1.f through 1.j and 1.p without explanation. He admits the two personal conduct allegations. Applicant listed only one delinquent debt that he was paying on his e-QIP.

Applicant admits he was terminated from his job in a restaurant because, as he reported, he did not “fit the niche.” He presented no other information on reasons why he was terminated. He was terminated from his job caring for a special-needs person in 2013 because of an incident involving his girlfriend. He permitted the special needs person to be involved in a personal dispute he had with the girlfriend. He attributes most of his delinquent debt to losing this job. He did not present any documentation to indicate payments or resolution of any of his debts.

In the January 2017 PSI, Applicant noted the car loan debt at SOR 1.a and stated he will make monthly payments when he could to satisfy the debt. He said he would resolve the cell phone debt at SOR 1.b by February 2017. Applicant stated he had little knowledge of the other debts. He does not have health insurance so he has unpaid medical debt. He does not know when these unpaid debts will be paid. He has not received any financial counseling or education, and has not participated in any debt consolidation programs. He does not have the details for his debts but will research and pay them. Applicant did not present any information or documents in response to either the SOR or the FORM to indicate that he contacted creditors or paid any debts. (Item 5, PSI, January 18, 2017)

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 or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet his or her 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.

Even though Applicant denied half of the SOR debts without any explanation, the Government presented sufficient information in the form of credit reports and court documents to establish all of the SOR delinquent debts. Applicant also admitted that he had multiple delinquent debts. The information is sufficient to raise issues about Applicant's willingness and ability to meet his financial obligations, and raises security concerns under the following Financial Considerations Disqualifying Conditions at AG ¶ 19:

- (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.

Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue. Based on the information provided by Applicant, 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, 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 sources, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual has initiated and is adhering to a good-faith effort to repay the overdue creditors or otherwise resolve debts.

The mitigating conditions do not apply. Applicant's debts are numerous and are not resolved so they are recent. Applicant did not provide information concerning financial counseling or participation in debt consolidation programs. 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 provide information to establish that he resolved the debts alleged in the SOR. Applicant presented no evidence of debt payments or resolution of any debts. He is gainfully employed and appears to have the ability to resolve his delinquent debts. He has not acted responsibly because he has not developed plans to pay his delinquent debts. He did not provide 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 no clear evidence that his debt problems have been resolved, so his finances are not under control. There is insufficient evidence to establish why Applicant was unable to make greater progress resolving his debts.

The available evidence shows that Applicant has been employed since November 2015, so the ability to resolve his financial problems are within his control. He did not present a plan to resolve his financial problems or any efforts to pay or resolve his delinquent debts. Accordingly, he has not established a good-faith effort to pay his debts. 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. He did not present information to show a good-faith effort to resolve his debts. Applicant did not present sufficient information to mitigate financial security concerns.

Personal Conduct

Personal conduct is a security concern because conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during national security investigative or adjudicative processes. (AG ¶ 15). Personal conduct is always a security concern because it indicates whether the person's past conduct justifies confidence that the person can be trusted to properly safeguard classified or sensitive information.

The SOR alleges that Applicant was twice terminated for cause, in 2009 and in 2013. This information is sufficient to raise security concerns under Personal Conduct Disqualifying Condition AG ¶ 16(c): credible adverse information in several adjudicative

issue area that is not sufficient for an adverse determination under any single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

In 2009, Applicant was terminated from a job in a restaurant because, as he reported, he did not “fit the niche”. He was terminated in 2013 from a job as a caregiver for a special-needs person because he permitted his then girlfriend to have an issue with the special-needs person. The incidents raise questions about Applicant’s judgment, reliability, trustworthiness and willingness to comply with rules and regulations. Applicant has not presented any information that would explain or mitigate the character questions and security concerns raised by his terminations.

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. Applicant failed to pay delinquent debts and he was terminated from two jobs which question his judgment, reliability, trustworthiness, and ability to comply with rules and regulations. In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, he failed to supplement the record with relevant and material facts regarding his financial circumstances and his judgment and reliability, to adequately articulate his positions and other reasons for his terminations, and to provide facts to mitigate the financial and personal conduct security concerns. In short, the file lacks sufficient evidence to establish that he paid, arranged to pay, settled, compromised, disputed, or otherwise resolved his delinquent accounts. The record lacks corroborating or substantiating documents and details to explain his finances. The record does not

provide information to mitigate the two terminations. Applicant's failure to appropriately manage his finances and resolve financial issues, as well as his failure to mitigate the terminations indications that he may not adequately safeguard classified information. 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 did not mitigate the security concerns arising from his financial situation and personal conduct.

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.p:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a and 2.b:	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