



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 17-03207
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

07/02/2018

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns about his financial problems. Eligibility for access to classified information is denied.

Statement of the Case

On September 27, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations).¹ On October 23, 2017, Applicant answered the SOR and requested a hearing. On February 1, 2018, a notice of hearing was issued, scheduling the hearing for February 20, 2018. The hearing proceeded as scheduled. Applicant testified and submitted three documents, which I admitted as Applicant Exhibits (AE) A through C, without objection. Department Counsel submitted four documents, which I admitted as Government Exhibits (GE) 1 through 4, without objection. After the hearing, Applicant

¹ The action was taken under Executive Order (EO) 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 implemented by the DOD on June 8, 2017.

timely submitted six documents (two emails with four total attachments), which I admitted as AE D through I, without objection. DOHA received the transcript (Tr.) on March 9, 2018.

Findings of Fact

The security concerns alleged in the SOR are based on Applicant's eight delinquent debts (SOR ¶¶ 1.a-1.h). In his Answer, Applicant admitted all of the alleged debts and attributed his financial delinquencies to a period of unemployment. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 48 years old. He served on active duty in the U.S. Navy from 1995 to 2004, when he was honorably discharged. He earned a bachelor's degree in 2003. From July 2006 to June 2013, he was employed as a systems engineer. He was unemployed from June 2013 to October 2014. Since October 2014, he has been employed full time as a systems engineer for a DOD contractor. He has never married, and he has no children.²

Applicant's admissions, October 2015 credit report, and August 2017 credit report establish the eight delinquent debts, totaling approximately \$26,900. These debts became delinquent between August 2011 (SOR ¶ 1.d.) and April 2015 (SOR ¶ 1.c.). Applicant has made no payments on any of the established debts.³

In about 2015, Applicant engaged the services of a debt-resolution company to dispute his debts and to negotiate settlements or payment plans on his behalf. After about eight months, Applicant ceased using this company's services and began contacting some creditors himself, after the company's efforts had yielded no results.⁴

Applicant admitted that he had become delinquent on some debts (SOR ¶¶ 1.a. and 1.d.) before his June 2013 unemployment. Prior to receiving the SOR, Applicant used his savings (\$15,000) to purchase a home in early October 2017. He testified that while he was aware of his delinquent debts at the time, he prioritized re-establishing his savings over making any debt repayments at the time of the home purchase. Applicant also testified that he owed approximately \$4,000 in delinquent state income taxes, and that he had initiated monthly payments (\$200) towards that debt in February 2017.⁵ He provided no corroborating documentation of any such payments. This tax debt is not alleged in the SOR.

Applicant attributed his financial delinquencies to his unemployment and his mother's medical expenses; however, he did not provide any further information about

² GE 1.

³ GE 1-4; Tr. 21, 48.

⁴ Tr. 32, 43.

⁵ Tr. 26-27, 36, 47.

these medical expenses. He acknowledged that his financial delinquencies began prior to his unemployment and his mother's illness.⁶

Applicant earned three Navy Achievement Medals and two Good Conduct Medals during his military service. Applicant's character and work performance are well regarded by his co-workers.⁷

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, 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(c), 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 S`OR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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.

⁶ Tr. 49.

⁷ AE E-I.

Section 7 of EO 10865 provides that adverse 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 or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or inability 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 concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant's eight delinquent debts total approximately \$29,300. These debts became delinquent between August 2011 and April 2015, and they remain outstanding. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual 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 bears the burdens of production and persuasion in mitigation. Applicant's delinquent debts remain. Although Applicant engaged the services of a debt-resolution company in 2015, there is no evidence that he undertook any debt-resolution efforts beyond disputing the admitted debts. There is no documentary evidence of any debt payments since Applicant's employment began in October 2014. Applicant has not provided documentary evidence of sufficient debt-resolution efforts to remove doubts as to his reliability and judgment. AG ¶ 20(a) does not apply.

Applicant's period of unemployment contributed to his financial problems; however, Applicant incurred some delinquent debts both before (SOR ¶¶ 1.a. and 1.d.) and after (SOR ¶ 1.c.) this period of unemployment. Furthermore, even though his debts are due to conditions beyond his control, Applicant must also demonstrate that he acted responsibly under the circumstances to address his delinquent debts. Despite being aware of his delinquent debts and delinquent taxes, Applicant spent his savings (\$15,000) to purchase a house in October 2017. By failing to make any debt-resolution efforts beyond disputing the delinquent debts, Applicant's conduct does not reflect an adherence to his financial obligations. Applicant has not presented sufficient documentary evidence for me to conclude that he acted responsibly with respect to his delinquent debts. AG ¶ 20(b) does not apply.

There is no evidence of any credit counseling. He has not provided a monthly budget, and all of the alleged debts remain unaddressed. Therefore, I cannot conclude that his financial problems are under control. AG ¶ 20(c) does not apply.

The concept of good faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. In 2015, Applicant engaged the services of a debt-resolution company to dispute his admitted debts. Aware that those disputes were unsuccessful, Applicant made no other debt-resolution efforts since 2015. AG ¶ 20(d) does not apply.

Applicant encountered circumstances beyond his control that contributed to his financial problems. Nonetheless, he has not demonstrated that he has acted responsibly in addressing his delinquent debts, all of which remain outstanding and unresolved. Applicant did not mitigate the financial considerations security concerns.

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 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 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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant's character and work performance are highly regarded by his co-workers. Nonetheless, there is no documentary evidence of any debt-resolution efforts beyond disputing debts Applicant had admitted. He failed to demonstrate that he acted responsibly in addressing his delinquent debts and adhering to his financial obligations. Given his burden to demonstrate financial responsibility, trustworthiness, and good judgment, 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.h.:	Against Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.⁸

Eric H. Borgstrom
Administrative Judge

⁸ After the hearing, Applicant requested his eligibility for access to classified information be continued conditionally, pursuant to Appendix C of the Directive. I have considered the exceptions in Appendix C and have found them inapplicable in this case, particularly because there is no documentary evidence that Applicant is currently engaged in any debt-resolution efforts or repayment plans.