



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-01244

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

12/07/2018

Decision

LYNCH, Noreen A., Administrative Judge:

This case invokes security concerns raised under Guideline F (Financial Considerations). Applicant presented insufficient evidence to mitigate the financial security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 25, 2018, in accordance with the Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant timely answered the SOR, and requested a review based on the written record in lieu of a hearing. (Answer.) The case was assigned to me on November 30, 2018. Department Counsel submitted a File of Relevant Material (FORM), dated July 12, 2018. The Government submitted seven Items for the record. Applicant timely responded to the FORM with a packet of documentation, which was marked as AX A, and entered into the record without objection.

Findings of Fact

Applicant, age 32, separated from his wife in 2015, and has three minor children and two stepchildren. He obtained his general education degree (GED) in April 2005. He attended college courses from 2011 to 2015, but he has not received a degree. Applicant served on active duty in the U.S. Army from 2006 to 2016, receiving an honorable discharge. Applicant completed a security clearance application on August 24, 2016. (Item 3) He has held a security clearance since 2006. (Item 4) Applicant has been with his current employer since December 2016. (Item 4)

The SOR alleges in ¶¶ 1.a through 1.o that Applicant has 15 delinquent debts totaling approximately \$36,400. (Item 1). Applicant admits that he owes each of these debts. (Item 2) He provided an explanation for the delinquent debts in his Response to the FORM. (AX A)

Applicant separated from his spouse in 2015. He notes the delinquent debts stem from the marital separation. Applicant's wife and children left him, but his wife could not find a job. He takes full responsibility for the debts. In his response to DOHA interrogatories, Applicant explained that each delinquent debt was not paid, but was in a payment arrangement plan. (Item 5)

During Applicant's 2017 OPM investigative interview he explained that he fell behind in his bill payments during 2015 and 2016, due to the marital separation and being left with one income. He supported his wife and children, but did not have sufficient income for living expenses or other bills. He was not allowed to stay in military quarters and had to find a room with a friend. He used credit cards to pay for food and other daily expenses. He also took out some loans. Applicant told the investigator that he did not recognize some of the accounts. He also reported that he would pay the delinquent accounts with his tax refund and salary. (Item 4)

Applicant provided documentation that in September 2014, he obtained a budget, an action plan and a payment plan agreement from a company that would provide financial counseling and help Applicant in resolving his debts. (AX A) The agreement requires that Applicant pay \$462 a month beginning in November 2018. An automatic withdrawal of \$378 would continue monthly until August 2021. Applicant wanted to start the program earlier, but he stated that he lost a job on May 2018 because his employer lost the government contract that he was working on. (AX A)

Applicant also arranged another plan with another company with a payment plan to begin in March 2019. He agreed to pay \$550 each month, withdrawn from his account, for a period of 60 months. The estimated termination date is September 2023. He arranged this plan for a later date as he wants to enroll in college again and would have additional funds from the GI bill housing stipend in the amount of \$1,000 that he would set aside for other payments. (AX A)

Applicant provided one receipt for the debt alleged in SOR ¶ 1.m for \$125. This account is paid in full. (AX A) Applicant stated that with both payment plans and an

established budget he will pay his debts. Applicant's budget shows a negative monthly net remainder at this time. He noted that one of his children has diabetes and requires insulin to live. His job and security clearance mean everything to him. He believes that his military service has shown that he can overcome obstacles and adversities. He has taken steps to mitigate his financial issues. Applicant has not yet produced any receipts for payments on his repayment plans.

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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 concern under this guideline 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. 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 greater risk of having to engage in illegal or otherwise questionable acts to generate funds

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), AG ¶ 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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;

AG ¶ 20(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;

AG ¶ 20(c): the individual has received or is receiving financial 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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquent debts are the result of some unemployment after he left the military in 2016 and his marital separation in 2015. He had one income at that time to pay bills and support his family. He lived on loans and use of credit cards to support himself. He admitted that in 2015 and 2016, he began having a problem with paying all his bills.

Applicant presented recent information that he obtained the services of two companies to resolve his delinquent debts. He received financial counseling, obtained a plan of action and established a budget. He paid one small debt. His two payment plans start in November 2018 and March 2019. He did not provide any proof that he has made any payments yet on either plan. His budget shows a minus net monthly remainder. AG ¶ 20(a) is not fully applicable due to the lack of clarifying information.

AG ¶ 20(b) is not fully established. His debts are due to circumstances beyond his control, but he obtained services in 2018 when he knew he was having financial difficulty in 2016. It is not clear from the record what his annual salary was in 2015, or anything he did to establish that he undertook responsible action under the circumstances.

AG ¶ 20(c) is partially established. He is working with two financial companies and arranged repayment plans. His plans will last until 2023 and he has not made one payment yet on the first plan. There is no track record. AG ¶ 20(d) is not fully established because his payments have not started. He did not produce sufficient documentation to fully support this mitigating condition. Applicant has not met his burden to mitigate the financial concerns set out in the SOR.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including his many years of military service, and the circumstances beyond his control, which led to his debts. I conclude that Applicant has not mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-n:	Against Applicant
Subparagraph 1.o:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge