



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-00775

Appearances

For Government: Julie R. Mendez, Esq., Deputy Chief Department Counsel
For Applicant: *Pro se*

11/20/2018

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 April 4, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for employment with a defense contractor. (Item 3) The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On March 28, 2018, DOD issued Applicant a Statement of Reasons (SOR) alleging delinquent debts of security concerns under Guideline F, financial considerations. (Item 1) Applicant replied to the SOR on May 9, 2018, admitting 12 of the 14 allegations of delinquent debt. He requested a decision based on the written record. (Item 2) The original 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 June 8, 2017.

Department Counsel submitted the Government's written case on May 29, 2018. (Item 10) Applicant received a complete file of relevant material (FORM) on June 4, 2018. He was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not provide a response to the FORM. The case was assigned to me on September 12, 2018.

Findings of Fact

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 30 years old, graduated from high school in May 2006, and attended community colleges while on active duty but has not received a degree. He served on active duty in the Navy from August 2006 until February 2014. Applicant married in March 2010 and separated in January 2014. He has two children. He was granted eligibility for access to classified information while on active duty in the Navy.

Applicant entered active duty immediately after graduating from high school in 2006. After leaving active duty in February 2014, Applicant was unemployed for three months before being employed as a field engineer by a defense contractor in April 2014. He has been employed as a field engineer by different defense contractors since then, except for a brief period of unemployment from May to November 2015 (Item 3. E-QIP, dated April 4, 2017)

Credit reports (Item 8, dated February 22, 2018; Item 9, dated June 9, 2017) confirm, the following delinquent debts in the SOR that had either been charged off or in collection; charged-off credit union accounts to the same credit union for \$18,194 (SOR 1.a), \$6,624 (SOR 1.c), \$3,935 (SOR 1.d), \$1,881 (SOR 1.f), \$1,311 (SOR 1.g), and \$602 (SOR 1.h); child support in collection for \$12,028 (SOR 1.b); a credit card charged off for \$2,697 (SOR 1.e); a medical debt in collection for \$112 (SOR 1.i); and a cable bill in collection for \$90 (SOR 1.j). Court documents confirm four judgments for apartment rent of \$1,134 (SOR 1.k, (Item 4)), \$1,028 (SOR 1.l, Item 5)); \$3,894 (SOR 1.m, Item 6)); and \$1,275 (SOR 1.n, Item 7)). Applicant admitted in his response to the SOR all of the debts except for the medical debt of \$112 at SOR 1.i and the communication service debt of \$90 at SOR 1.j. He provided no explanation for why he denied these two debts. The delinquent debts listed in the SOR total approximately \$35,565.

On the e-QIP, Applicant reported that he was in arrears on his child support requirements because of his periods of unemployment. He noted that a child support order was placed with his employer. While he mentioned that the periods of unemployment impacted negatively his ability to make child support payments, he provided no information or explanation to justify this conclusion.

Applicant provided no information to explain, justify, or mitigate the delinquent debt. Applicant provided no evidence of any payments made on any of the debts. Applicant did not provide any information concerning his salary, expenses, and income.

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 or her 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 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 and court documents can normally meet the substantial evidence standard to establish financial delinquency. Applicant’s admissions, credit reports, and court documents 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 failure to pay debts 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 issues. Applicant provided no documents for explanation and mitigation in response to the SOR and FORM. Accordingly, the available evidence does not show that Applicant has resolved or is resolving any of his delinquent debts.

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; and

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

The mitigating conditions do not apply. The information in the case file shows that Applicant has been gainfully employed except for short periods of unemployment since entering active duty in the Navy in 2006. Regular employment for that many years appears to provide him the income and ability to pay his financial obligations. Applicant provided no information on his present salary or the status of his finances. He did not present information on contacts with creditors or efforts to establish payment plans. His lack of documented action results in his debts being numerous, ongoing, and recent. There is no information to verify his debts were incurred under circumstances making recurrence unlikely. Applicant presented no evidence that he received financial counseling.

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. All that is required is that Applicant act responsibly given his financial 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 meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments. 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 present evidence of any debt payments.

Applicant did not provide sufficient details about what he plans to do to address the debts alleged in the SOR. He did not state that he had a plan to pay his 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 debt resolution. There is insufficient evidence to establish why Applicant was unable to make any 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 information. 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 that Applicant served approximately eight years on active duty in the Navy. However, Applicant did not provide sufficient credible documentary information to establish that he took or plans to take 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. In requesting an administrative determination, Applicant chose to rely on the written record. In doing so, he must sufficiently supplement the record with relevant and material facts regarding his finances, adequately articulate his actions and positions, and provide facts to mitigate the security concerns. In short, the file as a whole does not contain sufficient information to mitigate financial security concerns.

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. 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

Subparagraphs 1.a – 1.n: 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