



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



In the matter of:)
)
) ISCR Case No. 14-03151
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A.Cervi, Esq., Department Counsel
For Applicant: *Pro se*

08/28/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On September 22, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 effective within the DOD for SORs issued after September 1, 2006.

On November 14, 2014, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. He submitted a statement with explanations. No other documents were submitted. On April 16, 2015, Department Counsel submitted the Government’s file of relevant material (FORM) and it was mailed

to Applicant. He received it on June 15, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not object to any of the Government's documents offered as Items 1 through 4. They are admitted into evidence. Applicant provided a response to the FORM, which along with his statement included with the SOR, were admitted into evidence without objection. The case was assigned to me on July 31, 2015.

Findings of Fact

Applicant admitted all of the SOR allegations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 53 years old. He has not served in the military. He married in 1983 and divorced in 1988. He remarried in 1997 and divorced in 2010. He has four children, ages 32, 30, 23, and 17. He was employed from May 2000 to March 2007. He was unemployed from March 2007 to September 2007. He was employed in private industry from October 2007 to July 2012. He has worked for his present employer, a federal contractor, since August 2012.¹

Applicant filed Chapter 7 bankruptcy on or about May 2005 and had his debts discharged. The amount that was discharged is unknown. He stated in his answer to the SOR that he had a good job, but was laid off and he "got in over my head."² He further stated: "After being laid off there was not enough money coming in to pay all my bills. I felt the best thing to do was to file for bankruptcy."³ Applicant did not list on his security clearance application (SCA) a period of unemployment prior to 2005.⁴

The SOR alleges six delinquent debts totaling approximately \$31,284. The debts are supported by credit reports from March 2013 and April 2014.⁵ Regarding the collection account debt to a cell phone company in SOR ¶ 1.b (\$985), Applicant stated his wife at the time used his name to obtain a cell phone and then did not pay the bills. He did not provide evidence of any effort to dispute or resolve the debt.⁶

¹ Item 2.

² Item 1.

³ Item 1.

⁴ Item 2.

⁵ Item 3 and 4.

⁶ Item 1.

The debt in SOR ¶ 1.c (\$466) is a medical bill that Applicant acknowledged “is most likely mine.”⁷ He indicated he would pay it when he has the money. It is unresolved. The charged off debt in SOR ¶ 1.d (\$14,753) is for a car loan. Applicant indicated he never should have purchased the car, but he needed reliable transportation. No other information was provided regarding Applicant’s resolution of the debt.⁸

Applicant indicated that he does not know what the debt is in SOR ¶ 1.e (\$12,441). He stated he planned to investigate the debt. No other information was provided as to what actions he took to dispute or resolve the debt.⁹

The debt in SOR ¶ 1.f (\$2,462) is for the balance due on a repossessed vehicle. Applicant co-signed on a vehicle loan for his son who defaulted on the payments. Applicant contacted the creditor who wanted the full balance paid. Applicant could not afford to pay the balance, and the vehicle was repossessed. The current status of the debt is unknown.¹⁰

Applicant did not recognize the debt in SOR ¶ 1.g (\$177) and was going to investigate it and resolve it. He did not provide information about any actions he has taken regarding the debt.¹¹

In his answer to the SOR, Applicant stated that he had some serious things come up in his life and did not handle them well. He planned on taking each item on the SOR one step at a time and have all the charges against his credit taken off within the next couple of years.¹² In his answer to the FORM, Applicant stated in 2010 he divorced due to some financial issues in the marriage. He did not elaborate. He stated that since his divorce he is more financially stable. He stated he promptly pays his child support, rent, utilities, and car insurance. He is continually trying to pay the debts on his credit report when he has extra money. Recently he has not had extra money and is living paycheck to paycheck. He plans to pay the debts as soon as possible and hopes to use next year’s income tax refund to pay them. He will continue to make payments until they are paid off.¹³

⁷ Item 1.

⁸ Item 1.

⁹ Item 1.

¹⁰ Item 1.

¹¹ Item 1.

¹² Item 1.

¹³ Response to the FORM.

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 are 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, 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(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 access to classified information will be resolved in favor of 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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 or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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 information. 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. I have considered the following under AG ¶ 19:

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

Applicant had debt discharged through bankruptcy in 2005. He has six delinquent debts alleged in the SOR, dating back to 2007, totaling approximately \$31,284 that are unresolved. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following 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 problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

After having his debts resolved through bankruptcy in 2005, Applicant again experienced financial problems and has numerous delinquent debts that are unresolved. His delinquent debts are unpaid and therefore recent. There is insufficient evidence to conclude his financial problems occurred under unique circumstances and are unlikely to recur. His finances cast doubt on his current reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply.

Applicant indicated he was divorced in 2010 due to “some financial issues in the marriage,” but he did not elaborate. His divorce was a condition beyond his control. For the full application of AG ¶ 20(b), there must be evidence that Applicant acted responsibly under the circumstances. Applicant has been employed steadily since his divorce. He indicated he was financially stable, but also stated he was living paycheck to paycheck and did not have the money to pay his delinquent debts at this time. Applicant did not provide sufficient evidence of actions he took to investigate debts he questioned or any attempts to resolve the delinquent debts alleged. AG ¶ 20(b) minimally applies.

There is no evidence to conclude Applicant has received financial counseling. He did not provide evidence that he has a realistic plan for resolving his delinquent debts or an established track record of payments. He did not provide specific evidence as to his current finances. I cannot find there are clear indications that his financial problems are being resolved or are under control. There is no evidence of a good-faith effort to pay his creditors. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant did not recognize certain debts alleged. He indicated his intent to research them and determine their validity. He did not provide evidence of what efforts he may have taken to dispute the legitimacy of the debts, submit documents to substantiate the basis of the dispute, or offer evidence of actions he has taken to resolve the issue. AG ¶ 20(e) does not apply.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 53 years old. He has a history of financial problems, which include a bankruptcy in 2005 and recent delinquent debts that remain unresolved. He did not provide documentation to support any efforts he may have taken to resolve his delinquent debts. Applicant does not have a consistent track record to show he is resolving his financial problems. There is insufficient evidence to conclude Applicant has met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude he failed to mitigate the security concerns arising under Guideline F, financial considerations.

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.g:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge