



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



In the matter of:)	
)	
)	ISCR Case No. 14-04289
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He is delinquent on two charged-off accounts, which total more than \$55,000. There is no showing of payments having been made on the debts. He was also charged with a felony possession of hydrocodone without a prescription. The charge was dismissed after treatment. Applicant has failed to mitigate the financial considerations security concerns. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on October 10, 2014, the DoD issued a Statement of Reasons (SOR) detailing security concerns. On

¹ Executive Order 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 (AG) effective within the DoD on September 1, 2006.

November 21, 2014, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated April 1, 2015. The FORM contained nine attachments (Items). On May 11, 2015, Applicant's response to the FORM was received. DC did not object to the submission of the letter, which was marked and admitted as Applicant's Exhibit (Ex.) A. On May 21, 2015, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he admitted his delinquent financial obligations from a failed partnership. He also admitted misusing OxyContin while holding a secret clearance and being charged with felony possession of hydrocodone without a prescription. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 50-year-old subject matter expert who has worked for a defense contractor since June 2008 and seeks to retain a security clearance. (Item 2)

In 2004/2005, Applicant entered into a partnership to invest in residential real estate. He purchased vacant land on which to build property. The land was purchased before Hurricane Katrina, which raised home building insurance rates, and prior to the crash of the housing market in 2008. (Item 1) The sale of two lots did not assist with his financial difficulties. He borrowed from his Individual Retirement Account (IRA) in an attempt to make payments on the investment property. Additionally, his partner was unable to continue investing in the partnership.

Applicant states that in July 2013, he filed for bankruptcy protection. However, he failed to provide any documents related to that filing. A letter from his bankruptcy attorney dated in November 2014, states they anticipate filing on or before November 30, 2014. In response to the FORM, the same attorney submitted a letter dated May 11, 2015, stating they anticipated filing on or before May 31, 2015. (Ex. A) No filing documents were received. He did pay a \$271 energy bill (SOR 1.c).

Applicant suffered pain from a bone spur to his toe, which was not relieved by his 2004 surgery. He periodically self-medicated with hydrocodone and oxycodone he received from a friend. He had no prescription for the prescription drugs. In March 2010, he reported to an emergency room believing he was suffering from food poisoning. When he checked into the hospital two prescription pills were discovered. The police were contacted, but due to the nature of Applicant's illness he was unaware an arrest warrant had been issued. He was in the hospital four days. He was charged with felony possession of hydrocodone without a prescription.

A traffic violation resulted in the discovery of the arrest warrant. Applicant spent eight days in jail before being extradited to another state to appear in circuit court. At a treatment center, Applicant received Naltrexone therapy. He entered into a pretrial drug

intervention treatment diversion program and was required to do 50 hours of community service. The charge was dismissed after he met the terms of the pretrial diversion program. Applicant satisfactorily completed a drug rehabilitation program, routinely sees a psychiatrist, and receives Naltrexone therapy.

In January 2014, in a Personal Subject Interview (PSI), Applicant was asked about his delinquent debts and drug arrest. He said he was filing bankruptcy to address the charged-off accounts. He fully explained what had happened with his arrest and the treatment he received thereafter.

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 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(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 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.

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 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.

Section 7 of Executive Order (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 or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage their finances to meet their financial obligations.

Applicant owes more than \$55,000 on two charged-off accounts. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five financial considerations mitigating conditions under AG ¶ 20 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, 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.

None of the mitigating factors for financial considerations extenuate the security concerns. Applicant's financial difficulties are both recent and multiple. In January 2014, he was made aware of the Government's concerns about his delinquent debt. At that time, he indicated the debts would be addressed through bankruptcy. In response to the SOR, his attorney indicated they planned on filing for bankruptcy protection in November 2014. In response to the FORM, his attorney stated they planned on filing for bankruptcy protection in May 2015. No evidence of a filing was submitted. He has provided no documentation showing payment on any of his debts except for the energy bill he paid.

Applicant provided no evidence he has received credit or financial counseling. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. He has not made a good-faith effort to satisfy his debts.

AG ¶ 20(a) does not apply because the delinquent debts remain unpaid, and because they remain unpaid, they are considered recent. It has been almost a year and a half since Applicant was asked about his delinquent debts. Given sufficient opportunity to address his financial delinquencies, Applicant has failed to act timely or responsibly under the circumstances. Failing to pay the debts casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant entered into a real estate investment partnership that failed. Hurricane Katrina's impact on the home building industry and the crash of the real estate market contributed to the failed partnership. These are factors beyond his control. However, he indicated an intent to file for bankruptcy protection to address his delinquent obligations, but has provided no documentation he has done so. By failing to show any payments or filing bankruptcy he has failed to act responsibly under the circumstances.

The mitigating condition listed in AG ¶ 20(c) does not apply. There has been no evidence Applicant has received financial counseling. Additionally, there is no clear showing that his financial obligations are being addressed. The mitigating condition listed in AG ¶ 20(d) applies only to the \$271 energy bill he paid. The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has not disputed any of the delinquent debts. He admitted all of the debts.

Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement: Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The three most pertinent conditions are:

- (a) any drug abuse;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (g) any illegal drug use after being granted a security clearance.

Applicant's 2004 surgery for a bone spur did not relieve his pain. He periodically self-medicated with the use of prescription drugs provided by a friend. He did so while holding a security clearance. In May 2010, he was discovered with two prescription pills when he sought emergency medical treatment. He was charged with felony possession of hydrocodone without a prescription. The charge was dismissed when he met the terms of a pretrial diversion program.

AG ¶ 25(a) drug use, AG ¶ 25(c) purchase, and AG ¶ 25(g) illegal drug use after have being granted a security clearance apply.

AG ¶ 26 provides conditions that could mitigate security concerns:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements,

without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant's self-medication was occasional to address the pain caused by the bone spur. AG ¶ 26(a) has some application. AG ¶ 26(c) does not apply. The use did occur after a severe or prolonged illness and the abuse has since ended. However, he was never prescribed the drugs. AG ¶ 26(d) applies because he has satisfactorily completed a drug rehabilitation program, routinely sees a psychiatrist, and receives Naltrexone therapy.

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(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. The reasons the debt became delinquent are beyond Applicant's control, but he has failed to document any payment on the debts or file for bankruptcy. He has been aware of the Government's concern about his delinquent debts since his January 2014 PSI, which was reinforced in the October 2014 SOR and April 2015 FORM. Only the \$271 energy bill has been paid. There is no documentation Applicant has recently contacted his creditors.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances and facts which would mitigate the financial considerations security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. He failed to provide such information and failed to mitigate the financial considerations security concerns.

Applicant suffered pain from a bone spur for which he occasionally took a prescription pain medication. He did so while holding a clearance. He did not have a prescription for the medication. However, he has received treatment, continues to see a psychiatrist, and takes Naltrexone. The drug use is no longer a security concern.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance due to the unaddressed delinquent debts. For all these reasons, I conclude Applicant has not mitigated 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, Financial Considerations: AGAINST APPLICANT

Subparagraph 1.a and 1.b: Against Applicant

Subparagraphs 1.c: For Applicant

Paragraph 2 Drug Involvement: FOR APPLICANT

Subparagraphs 2.a and 2.b: For 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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge