



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



In the matter of:)	
)	
)	ISCR Case No. 14-04488
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

04/11/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On January 21, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a review based on the written record in lieu of a hearing. The case was assigned to me on March 3, 2016. Department Counsel submitted a File of Relevant Material (FORM), dated November 12, 2015¹. Applicant received the FORM on November 21, 2015. Applicant timely submitted a response to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

¹The Government submitted four items for the record.

Findings of Fact

In his answer to the SOR, Applicant admitted SOR allegations 1.e, 1.f, 1.g,1.h, and 1.o under Guideline F. He refuted SOR allegations 1.a,1.b, and 1.n. He provided explanations that the remaining debts alleged: 1.c, 1d, 1.i,1.j,1.k,1.l,1.m,1.p, 1.q,1.r, and 1.s have been paid.(Item 2)

Applicant is 55 years old. He is divorced and has two children. He obtained his Master's degree in 2008. (Item 3) Since 2013, Applicant has been employed with his current employer. He worked as a federal contractor abroad from about 2006 to 2011. He completed an application for a security clearance on January 23, 2013. He has held a security clearance since 1987. (Item 3)

Financial

The SOR alleges 19 delinquent debts totaling approximately \$75,100, of which one is a 2009 federal tax lien in the amount of \$39,411; two medical judgments; 15 collection accounts; and a vehicle repossession balance in the amount of \$10,979. (Item 4) In his answer to the SOR, Applicant stated that the financial problems are the result of his 2014 divorce. In his 2013 security clearance application, he stated that he has hired a lawyer to "clean up his accounts" that his wife created. He noted that he would negotiate payment plans with companies and expected some to be paid within six months. He also responded the same to the federal tax lien issue. (Item 3) He noted that he had been unemployed for a time but did not list the date, which was sometime in 2012. He noted that his financial issues began in 2006. (Item 3) Finally, he stated that he had no knowledge of some unpaid bills until he returned to the United States in 2011.

As to the tax lien, he claimed that he has disputed the amount of the debt and is working with his lawyer to settle the issue. (Item 2) As to the other debts that he refuted, he gave the same answer that he is in the process of getting the accounts paid and seeking help from his lawyer.

Applicant claimed that certain debts have been paid either by himself or his wife by court order. He did not provide any evidence of payments. He stated that any debts that he incurred will be paid. He noted that he has never lived beyond his means. He provided for his family.

Applicant responded to the FORM by providing a letter from his attorney, dated November 25, 2015, that stated Applicant had retained the firm to negotiate and settle the outstanding tax liability with the IRS. The letter further noted that a payment plan will be set up in the near future to resolve the payment. (Response to FORM; AX A)

Applicant reiterated that he is trying to resolve the delinquent debts that are the result of his recent divorce. He intends to pay his debts and resolve the issues in 2015. Applicant states that he has never engaged in illegal acts to generate funds, nor has he

had an issue with gambling. He states that his lack of judgment was in trusting his wife. (Item 2)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect 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 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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

applicant concerned.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis.

Guideline F, Financial Considerations

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

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant incurred delinquent debt in the amount of approximately 75,000. He has a federal tax lien from 2009. His credit report confirms the delinquent debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant’s financial difficulty make it difficult to conclude that it occurred “so long ago.” Applicant’s debts remain unresolved. He reported that he is working with a lawyer on payment plans, but did not submit any documentary evidence of a real plan. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior were largely beyond the person’s control (e.g.,

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances) does not apply. Applicant cites to his divorce and his wife's lack of attention to financial issues when he was abroad. He had a period of unemployment in 2012. He worked abroad for many years. Since 2013, he has been employed, but he has not produced any evidence that he has paid even small debts. His lawyer's letter of November 2015 noted they would arrange a plan with the IRS but there were no details. A promise to pay in the future is not sufficient to show responsibility.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. There is nothing in the record that supports payments on his debts. There is no information to show that he has obtained recent financial counseling. FC MC AG ¶ 20(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) does not apply because there are no indications his financial problems are being resolved or under control.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a 55-year-old man who is divorced and has two children. He has held a security clearance for many years. He worked abroad for some years. There is no indication that he has criminal or alcohol problems. However, he has not submitted documentary evidence to mitigate the financial considerations security concerns. He intends to pay his debts. He notes they are the result of a 2014 divorce. He has been promising to resolve the debts since 2013. He is working with a lawyer to resolve his financial issues, but he has not provided details or evidence concerning payments or

