



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-04660
)	
Applicant for Security Clearance)	

Appearances

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

10/20/2015

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted insufficient documentary evidence to mitigate Guideline F security concerns. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On January 28, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) 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; 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.

In a response to the SOR, dated February 21, 2015, Applicant admitted three of the five allegations raised, and requested a determination based on the written record in lieu of a hearing. On June 18, 2015, the Government issued a File of Relevant Material (FORM) that contained six attachments (“Items”). Applicant responded to the FORM within the 30 days provided with additional material. The case was assigned to me on September 22, 2015. Based on my review of the case file and submissions, I find Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 45-year-old cable fabricator who has worked for the same defense contractor since 2002. He served honorably in the United States military from 1988 to 1999. He then served as an active duty reservist from 1999 to 2012. He completed a bachelor's degree program in 2013. Divorced, Applicant is the father of one adult child. At issue is slightly less than \$8,500 in delinquent debts.

In 2012, Applicant failed to timely file federal and state tax returns for tax year (TY) 2011. He cites to a busy work and school schedule, as well as insufficient funds to pay his taxes, for his delay in filing. He wrote that this was his first time in 28 years he filed his tax returns late. (Response to the FORM) He wrote that he received an extension for filing his tax returns, but provided no documentary evidence to that effect. (Response to the FORM)

Applicant ultimately filed those tax returns in 2013, when he filed for both TY 2011 and TY 2012. For TY 2011, Applicant owed \$400 toward state taxes and \$3,600¹ to the Internal Revenue Service (IRS) for federal taxes, totaling \$4,000. (FORM, Item 4 at 9) His current IRS balance in February 2014 was \$7,169.61 (SOR allegation 1.a). (FORM, Item 4 at 9) He was previously delinquent to the IRS in the approximate amount of \$10,000 for TY 2009 and TY 2010. (FORM, Item 4 at 9) Applicant wrote that he continues to be in repayment on his IRS debts. His only documentation regarding the IRS is an October 2011 IRS letter stating it accepted his offer to make payments on his outstanding balances for TY 2007 through TY 2010 and the 2015 monthly billing statement showing a payment of \$98 was owed toward TY 2011. (Response to the SOR, attachments)

Applicant became delinquent on a credit card in January 2013 after forgetting about it. (FORM, Item 4 at 5 and 10) He then began making regular payments on the account that were routinely one to two months late. The account, noted as having a past-due balance of \$221 and an outstanding balance of about \$1,024 (SOR allegation 1.b), was ultimately settled after payment of approximately \$390. (Response to the SOR, IRS-related attachments)

In 2011, Applicant became delinquent on a shopping catalog account (SOR allegation 1.c for \$455) and a home décor catalog (SOR allegation 1.d for \$383) because he could not afford to honor the balances in 2012 and then he forgot about the debts. Applicant provided no documentary evidence showing progress on the former account, which became delinquent in 2011. He wrote that he had lost track of the account until late 2014, when he contacted the creditor. No documentary evidence,

¹ Applicant provided a May 2015 IRS document indicating the original amount owed was \$3,207.52. That amount had increased to \$4,180.37 after an additional failure-to-pay penalty and interest charges. It references an installment agreement and indicates that he owed a \$98 monthly payment toward his TY 2011 debt, but does not reflect whether this was to be his first payment on the referenced agreement or the latest in a series of payments. Absent some indication the total TY 2011 amount had been reduced, I conclude no payments had yet to be made. See Response to the FORM, IRS correspondence.

however, corroborates this assertion. As for the latter delinquent debt, 1.d, Applicant provided an account statement indicating he satisfied the latter delinquent debt. (Response to the SOR, attachments)

Applicant also has a delinquent debt for about \$206 (SOR allegation 1.e). It is related to a telecommunications account that was closed several years ago, but Applicant relates he did not know about the delinquency until late 2014. He wrote that he has made arrangements to make payments on the balance in the future. He presented evidence of a statement showing the account was paid in full. (Response to FORM, letter of July 30, 2015)

In addition, Applicant has been three months or more behind on his mortgage and a credit card account in the past few years. He has a history for falling behind on his mortgage for numerous reasons, all stemming to insufficient funds. Applicant also has multiple student loans outstanding, with deferments ending in the near future. No current documents reflect his present expenses or obligations. There is evidence of “some financial counseling,” but the extent of that counseling is not described. (Response to FORM) In sum, of the five debts at issue, Applicant provided documentary evidence he has addressed the debts at SOR allegations 1.b, 1.d, and 1.e.

Applicant is committed to his employer and completing his master’s degree program. Neither his loyalty, nor his record of service, is at issue. He is intent upon addressing his debts and improving his credit rating.² He did not disclose whether he has adopted a reasonable plan or strategy for addressing his remaining debts. He did not provide documentary evidence that such a plan has been devised or implemented.

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 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.

² In addition to the documents included in his Response to the FORM related to SOR allegations 1.a and 1.e, Applicant also submitted a document showing a zero balance on the account he used to pay child support. It also indicates his child support case is in the process of closing.

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 not drawn 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 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant incurred considerable delinquent debt and failed to timely pay his TY 2011 federal taxes. This is sufficient to invoke three financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

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;

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

AG ¶ 20(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.

The delinquent debts at issue are recent and multiple in number. The circumstances surrounding these debts are sketchy, at best. Therefore, it cannot be determined if a similar situation might not again occur. Applicant linked no unforeseeable or unexpected situations that adversely impacted his finances to the debts at issue here, and he presented no documentary evidence indicating he acted reasonably under such circumstances. At most, Applicant attributed some of these specific delinquent debts to having been too busy to keep up with his debts and tax filings. There is no documentary evidence showing he has formally disputed any of the accounts at issue. Such facts obviate application of AG ¶ 20(a)-(b) and AG ¶ 20(e).

Application of AG ¶ 20(c) depends on one of two facts being applicable. There is no documentary evidence showing that Applicant has received or is receiving financial counseling. Some progress has been made toward the debts at issue with regard to SOR allegations 1.b, 1.d, and 1.e, debts amounting to about \$810.

Documentary evidence, however, is deficient with regard to the current status of the larger account balances noted at SOR allegations 1.a and 1.c, the two largest obligations. Applicant showed that his liability to the IRS for TY 2011 is less than the sum noted in the SOR. However, his documentary evidence does not reflect a track record of timely payments on an established repayment plan. At best, it shows that a repayment plan for the TY 2011 was poised for commencement. As for the debt at SOR allegation 1.c, it is troublesome that Applicant "rediscovered" this \$455 obligation in late 2014, yet no documentation was provided indicating any attempts to satisfy the debt or to work with the creditor. Consequently, AG ¶ 20(c) does not apply because it is unclear

whether Applicant's problem is being resolved or is under control. At best, AG ¶ 20(d) applies in light of the \$810 in delinquent debt thus far addressed.

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 adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on 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 incorporated my comments under the guideline at issue 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 a 45-year-old cable fabricator who has worked for the same defense contractor since 2002. He served honorably in the United States military for over a decade, he then served as an active duty reservist from 1999 to 2012. He has earned a bachelor's degree. He is divorced and has one adult child. Nothing about Applicant's personal integrity or years of service is at issue.

Verified facts about Applicant are scant. What is clear is that Applicant was a year late to file his state and federal taxes for TY 2011. He was found to have been delinquent on those taxes. He had previously been delinquent on his federal taxes for TY 2009 and TY 2010. Applicant only provided a 2011 IRS letter stating it accepted his offer to make payments on his outstanding balances and a 2015 monthly billing statement showing a payment of \$98 was soon to be owed toward his adjusted TY 2011 balance. At best, this evidence shows that the balance owed the IRS is less than reflected in the SOR with regard to TY 2011. No other documentary evidence reflecting actual payments or plans was introduced regarding his tax obligation, which represents the largest portion of his delinquent debt. There is no record of regular, timely, and consistent payments on the purported plans. Documentary corroboration is also lacking with regard to the delinquent debt noted at SOR allegation 1.c. Only the satisfaction of the debts at SOR allegations 1.b, 1.d, and 1.e were supported by documentation.

Although Applicant satisfied or settled three of his debts, his two largest debts remain unaddressed. Whether his strategy is to satisfy his smallest debts first is unclear. Indeed, whether he has a reasonable plan for addressing his debts cannot be determined. The IRS documentation purporting to show established repayment plans does not establish that he has track record of regular payment on those debts, only that the amount at issue for TY 2011 is less than reflected in the SOR. No progress has been made on the \$455 debt at SOR allegation 1.c, which he apparently rediscovered over a year ago. When Applicant will be making payments on these two debts is unknown.

This process demands that an applicant employ a manageable and realistic plan to address his debts. It then requires documentary evidence that such a plan has been successfully implemented. Applicant failed to provide evidence of, or otherwise explain a, holistic approach for addressing his delinquent debts in a coherent manner. In absence of such evidence, and in light of the foregoing, I find that financial considerations security concerns remain unmitigated.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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.

Arthur E. Marshall, Jr.
Administrative Judge