



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



In the matter of:)	
)	
)	ISCR Case No. 14-04716
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

08/10/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On December 2, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline E (Personal Conduct), and 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 August 4, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated May 6, 2015¹. Applicant received the FORM on June 10, 2015. Applicant did not submit a response to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

¹The Government submitted five items for the record.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations under Guideline F and Guideline E, and provided explanations.

Applicant is 62 years old. He received his undergraduate degree in 1975. Applicant has been divorced three times. He has one child. He served in the United States Army from 1975 until 1995, honorably retiring. He has been employed with his current employer since 2014. (Item 2) He has held a security clearance since 1995.

Financial

The SOR alleges four delinquent debts totaling approximately \$302,000, of which one is a collection account totaling approximately \$248,000. (Item 1) In his answer to the SOR, Applicant stated that he resolved the SOR allegations 1.a, 1.b and 1.c, although he was not aware of them until after his security interview. He noted that 1.b and 1.c are duplicates. He did not provide any documentation to support his assertions. He intended to resolve the debt in SOR 1.a for \$577.

As to SOR allegation 1.d for \$248,747,000, for a collection account (an equity home loan) Applicant stated that his principal residence was lost due to divorce in 2009. He noted that the house went to foreclosure in 2010. He did not provide any other information or documentation, other than to say that he was aware of the foreclosure and that when the property sold prior to foreclosure, the debt was to be discharged at the auction. He provided no information or documentation to support this assertion. He commented that the mortgagor is well aware of the situation.

During his subject interview in 2014, Applicant discussed the foreclosure on his home. He stated the family home was lost to divorce and the fact that his ex-wife would not sign papers so that he could sell the home. Applicant stated that he turned the home over to the spouse. Applicant stated that the collection balance of \$248,747 was a home-equity loan that was part of the foreclosed property. There is no information concerning how the issue was resolved. (Item 3)

Personal Conduct

When Applicant completed his February 2014 security clearance application, he responded "Yes" to Section 26 - Financial Record questions concerning any financial delinquencies. He denied deliberate falsification of his answers debts. He stated that he was unaware of the allegations in SOR 1. a-1.c. He also disclosed the foreclosure. He did not answer "yes" to routine accounts delinquent because he did not know about the other three allegations. He put the Government on notice of financial issues by disclosing the foreclosure. I do not find that he falsified his security clearance application.

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 applicant concerned." ⁵ "The clearly consistent standard indicates that security clearance

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).

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

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 E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(d) credible adverse information in an adjudicative issue area that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Applicant answered “Yes” on his 2014 security clearance application in response to Section 26-Financial Record. He provided details on the foreclosure of his home. He thereby, put the government on notice of his financial issues. He did not know about the other accounts and therefore failed to answer “Yes” to routine accounts. He did not intentionally falsify his 2014 security clearance application.

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

⁷ *Id.*

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 \$900 and a collection account for a home-equity loan in the amount of \$248,747.00. 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 unpaid. He noted that he resolved some accounts, but he did not provide any documentation. 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., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances) partially applies. Applicant stated that his divorce caused the foreclosure of the home. However, he did not submit any evidence to prove a nexus, nor did he provide any documentation to show that the debt is resolved. I cannot find that he acted responsibly.

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 no information in the record despite Applicant's assertion he paid some delinquent accounts and intent to pay the remaining delinquent debt. There is no information to show that he has obtained any 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.

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 63-year-old employee of a defense contractor. He is three times divorced. He served in the military and honorably retired.

Applicant did not provide any documentation that he has resolved the delinquent debts or that there is nothing owing on the collection account regarding the home equity loan. Due to lack of documentation, he failed to mitigate the financial considerations guideline concern. As to the personal conduct security concerns, Applicant disclosed his home foreclosure on his 2014 security clearance application. He did not intentionally falsify his security clearance application by answering "No" to routine delinquent debts. He put the Government on notice about his financial issues and did not intend to deceive.

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-d:	Against Applicant
Paragraph 2, Guideline E :	FOR APPLICANT
Subparagraph 2.a:	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. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge