



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



In the matter of:)
)
-----) ISCR Case No. 14-04878
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire
For Applicant: *Pro se*

06/01/2016

Decision

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

Statement of the Case

On March 26, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).¹ Applicant answered the SOR on April 22, 2015. He also requested a determination based on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

On July 15, 2015, the Government prepared a File of Relevant Material (FORM), which included five attached items. Applicant timely responded to the FORM and submitted annotated copies of the FORM's items and an additional document. I was assigned the case on October 1, 2015. I have reviewed the official case file in its entirety. Based on my review, I find that Applicant failed to mitigate financial considerations security concerns.

¹ 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 (AG) effective within the DOD on September 1, 2006.

Findings of Fact

Applicant is a 55-year-old supervisor who has worked for the same Government contractor since 2003. He has earned a high school diploma, been married for over 30 years, and has at least one child. He has lived in the same home since the early 2000s.

At issue in the SOR are 18 delinquent debts, noted in allegations 1.a-1.r. In sum, the alleged debts amount to approximately \$56,065, ranging from \$22 to \$51,172. Applicant admitted all related allegations except for those set forth at 1.k, for \$78, and 1.q, for \$99, to which he responded by writing "not sure." (FORM, Item 2, SOR Answer) This includes about \$3,400 in medical collections, but the largest debt noted, at 1.n, for \$51,172, is for a charged off second mortgage. Applicant admitted this debt, but wrote that it was sold to another entity in 2013 after the one listed in the SOR. While the latter entity is reflected in his credit report, the original lender aligns with a first mortgage held by the more recent lender. The two mortgages noted by Applicant do not have a balance near the one noted in the SOR.

In response to the SOR, Applicant wrote that his medical bills were related to a 2009 knee surgery, his daughter's wisdom teeth, and to medical accounts poised to be removed from his credit report in 2015. He also referenced debts owed to a jeweler and to a cable telecommunications service. In response to the FORM, Applicant appended handwritten notes onto a copy of his security clearance application and to a credit report to make his corrections and comments. This includes notes regarding the accounts at issue. No documentary evidence, however, was offered to corroborate his assertions regarding those accounts.

As for the secondary mortgage issue, Applicant submitted a response to an email he wrote to the purported successor to the secondary mortgagor reflected on his SOR. In his email, he asked for an explanation concerning entries noted in a previous document. In response, the recipient conveyed that the numbers referenced were estimates that were "part of the preliminary disclosures," apparently to a loan refinance. (FORM Response, Email of Aug. 9, 2015) Highlighted is a "\$198,921 New loan amount with upfront mortgage insurance fee" and "\$110,590.29? Amount of money [the lender] is going to forgive." No link is provided connecting this lender with the lender cited in the SOR.

The remainder of Applicant's submissions is scant. Little insight is provided with regard to his current financial situation. There is no documentary evidence reflecting he has received financial counseling.

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 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.

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. 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. 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).

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.

The Government introduced credible evidence showing Applicant has multiple delinquent debts, to which Applicant admitted responsibility for the vast majority. This is sufficient to invoke 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 multiple in number and, given the limited evidence introduced, largely unaddressed. Many date back to the late 2000s. In light of the scant information provided about Applicant's present financial situation, it cannot be determined whether the debts at issue can be adequately addressed or whether more financial distress may arise in the future. Consequently, AG ¶ 20(a) does not apply.

Applicant failed to provide information regarding his knee surgery, daughter's dentition, or other medical bills. Therefore, it cannot be determined whether they were the result of an unexpected medical emergency. While it may be assumed that they were medically necessary, potentially giving rise to AG ¶ 20(b), there is insufficient evidence to establish that Applicant behaved reasonably at the time. As for the mortgage at issue, while some efforts may have been exerted to address it, the documentary evidence fails to show it has been addressed.

Furthermore, there is no documentary evidence reflecting that Applicant has received financial counseling. Moreover, there is no documentary evidence showing that progress has been made toward satisfying the debts at issue, that a plan has been devised and implemented to address that debt, or that Applicant has formally disputed

any of the debts at issue. Therefore, neither AG ¶ 20(c), AG ¶ 20(d), nor AG ¶ 20(e) 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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 incorporated my comments under the guideline at issue in my whole-person analysis. Applicant is a 55-year-old supervisor who has maintained a steady job and lived in the same home since the 2000s. He has earned a high school diploma, been married for over 30 years, and has at least one child.

Applicant has multiple medical debts which, while identified, are unexplored, unpaid, and appear to be unaddressed. As for the mortgage at issue, Applicant failed to provide a nexus between the loan identified in the SOR, the loan he references, and the materials he provided. Finally, there is no documentary evidence showing that his remaining debts have been addressed. At most, Applicant relies on the fact that some of his debts would be removed from his credit report due to their age, a factor that does not financially relieve him of responsibility for the underlying debt at issue.

This process does not require that an applicant show he has addressed all of the debts and issues set forth in the SOR. It is, however, expected that he provide documentary evidence reflecting that he has devised a workable plan to address his financial issues and that he has successfully implemented that plan. Without such documentary evidence, financial considerations security concerns remain sustained.

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.r:	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge