



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



In the matter of:)	
)	
)	ISCR Case No. 14-05024
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

10/09/2015

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 December 17, 2014, 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. Applicant received the SOR on January 8, 2015.

In a response to the SOR, dated January 18, 2015, Applicant admitted nine of the 11 allegations raised. Those 11 allegations represent approximately \$150,500 in delinquent debt, with Applicant denying debts amounting to about \$46,300. He also requested a determination based on the written record in lieu of a hearing. On March

30, 2015, the Government issued a File of Relevant Material (FORM) that contained seven attachments (“Items”). In the FORM, the Government noted that Applicant could comment on whether the attached summary of Applicant’s personal subject interview (FORM, Item 7) accurately reflected his statements, and whether he objected to the inclusion of this unverified document. Applicant received the FORM on July 2, 2015, and did not respond within the 30 days provided. 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 61-year-old employee of a defense contractor. He has been a self-employed painter for 35 years. His marriage of over 20 years ended in divorce. He has a grown daughter, for whom he voluntarily paid one-third of her college tuition. It is his intent to continue making a similar contribution toward her graduate work.

Applicant admitted nine of the 11 allegations raised in the December 2014 SOR, representing approximately \$150,000 in delinquent debt. He denied two of the allegations, writing that the amount alleged was incorrect. (FORM, Item 4 at 4) If his assertions are shown as true, that could reduce the total delinquent debt at issue to about \$104,000.

By way of explanation, Applicant summarized his debt situation in this way: “My business is down about 80% the last few years. [I am w]orking hard to get things back on track. Last five years I had a divorce [and] a daughter in college. Now I’m just working on getting out of debt.” (FORM, Item 4 at 4) He attributed his business downturn to a decline in the economy. (FORM, Item 7 at 6, 8)

With regard to past-due Federal taxes from 2011 in the approximate amount of \$20,000 (SOR allegation 1.j), Applicant wrote that he is in repayment on this obligation. This is consistent with comments he purportedly made to investigators between May 2014 and June 2014, but no evidence of such repayments was introduced. (FORM, Item 7 at 6-7¹) He similarly provided no evidence of payment or formal dispute with regard to the default judgment he received in 2011 for about \$6,258, which he maintains as being an incorrect balance (SOR allegation 1.c), and a state treasury sales tax obligation of approximately \$40,000 (SOR allegation 1.k), on which he told investigators he was making payments while his agent investigated the matter. (FORM, Item 7 at 6-8; Form 4 at 3) The results of any investigation on the latter debt are unknown.

¹ Item 7 is a personal subject interview comprised of an investigator’s notes. It was not previously reviewed or verified by Applicant. He was given the opportunity to make corrections, additions, or deletions with regard to the notes in a response to the FORM. Lacking a response from Applicant to the FORM, this unverified evidence will be given appropriate weight.

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.

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 approximately \$150,000 in delinquent debt. This is sufficient to raise two 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.

Applicant attributed his delinquent debts to adverse and unforeseeable events which occurred in the past few years, including a divorce and a drastic reduction in work caused by a downturn in the economy. There is, however, no documentary evidence

indicating his efforts to address his debts or survive financially in the face of these circumstances. Therefore, without some documented evidence indicating his behavior under the adverse circumstances he faced, AG ¶ 20(b) only applies in part.

The debts at issue remain unaddressed and are multiple in number. There is no documented evidence showing Applicant has received appropriate financial counseling, initiated payment on any of the debts at issue, or formally disputed any of these debts with either a creditor or one of the leading credit reporting bureaus. Little is known about Applicant and his current finances. He provided no additional information in response to the case raised against him in the FORM. Without documentation corroborating his assertions, financial considerations remain unmitigated.

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 61-year-old man who has been a painter for 35 years. He divorced about five years ago. He has a grown daughter, for whom he has voluntarily been paying one-third of her collegiate expenses. Applicant attributes his delinquent debt to his divorce and the recent economic downturn that severely reduced his work opportunities by 80%. He admits the vast majority of the delinquent debts at issue. Regarding the two allegations he denies and one he admits with explanation, however, he provided no documentary evidence refuting his liability for them or reducing the amount at issue.

The burden in these proceedings is on the applicant to provide evidence rebutting, refuting, or otherwise challenging documented evidence of delinquent debt. Applicant provided little more than a long string of admissions, two denials, and a brief commentary in response to the SOR. He did not respond to the FORM. The attachments to the FORM include no documentary evidence from Applicant, although an unverified copy of an investigator's notes is included. Lacking documented progress on the delinquent debts at issue or evidence that a reasonable plan for addressing these debts has been successfully implemented, financial considerations security concerns remain unmitigated.

