DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
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	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

May 9, 2016

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on February 10, 2014. (Item 3.) On December 8, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on January 13, 2015, and requested a decision by an administrative judge without a hearing. (Item 2.) Department Counsel submitted the Government's written case (FORM) to Applicant on August 19, 2015.[1]

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[1]Department Counsel submitted seven items in the FORM. Item 7 is inadmissible and will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on March 24, 2014. The summary was never adopted by Applicant as his own statement, or otherwise certified by him to be accurate. Under Directive ¶ E3.1.20,

Applicant acknowledged receipt of the FORM August 31, 2015. He was given 30 days from receipt of the FORM to submit any additional documentation. Applicant did not submit any additional information within that time. The case was assigned to me on November 10, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 60, and single. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations in the SOR under this paragraph. Those admissions are findings of fact.

The SOR lists five delinquent debts (SOR 1.a through 1.e). The total amount of the debts alleged in the SOR is approximately $19,252. The existence and amount of all the debts is supported by credit reports dated February 25, 2014; September 24, 2014; and August 17, 2015. (Items 4, 5, and 6.) The debts have been delinquent since at least 2010, according to the available credit reports. Applicant states in his Answer with regard to each of the debts, "I admit and I am unable to resolve this issue at this time." (Item 2.) In his e-QIP he states, "I intend to meet these obligations by contacting these creditors and making payment arrangements one debtor [sic] at a time. I can't make arrangements with all of them at once, I would be in the same situation I was when I began having difficulties." (Item 3, Section 26.)

Applicant has been continuously and gainfully employed without break since March 2004. (Item 3, Section 13A.) He goes on to state in his e-QIP, "I was unable to meet debt requirements due to financial shortage. Working a lot of overtime to meet obligations and the overtime ceased. The loss of that income was the reason I was unable to continue my payments. Initially before being delinquent on any debt I attempted to secure a consolidation loan from numerous financial organizations and was declined." (Item 3, Section 26.)

Applicant did not submit a budget, or any other information concerning his income and expenses. Applicant submitted no evidence that he has received any financial counseling, contacted any creditors, or made any payments to any of his creditors. I find that Applicant has not documented any effort to reduce or resolve any of

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this Report of Investigation summary is inadmissible in the absence of an authenticating witness. Given Applicant's admissions, it is also cumulative.

the debts he admits to owing, despite knowing of the Government's concerns for some time.

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the 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, which are to be used as appropriate 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 avoided drawing 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, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (Guideline F, Financial Considerations)

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

> 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 having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be negligent, unconcerned, or irresponsible in handling and safeguarding sensitive information.[2]

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant had over $19,000 in past-due debts, which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying conditions may be mitigated where "the behavior happened so long ago, was so

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[2] *See* ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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." This condition does not apply as Applicant's financial difficulties have been in existence for several years and continue undiminished to date.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where "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." Applicant stated that a drop in his overtime pay precipitated his financial difficulties. However, he did not state when this happened, and what he has done to resolve the situation. This mitigating condition does not have application in this case.

AG ¶ 20(d) states it can be mitigating where, "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." There is no evidence in the record to show that he has done so with regard to any of his creditors.

In conclusion, looking at Applicant's entire financial situation at the present time, I cannot find that "there are clear indications that the problem is being resolved or is under control," as is required by AG ¶ 20(c). Paragraph 1 is found against Applicant.

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 the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. Applicant has had financial problems for several years, which he has not yet resolved. If he is able to successfully resolve his debts, Applicant may be eligible for a security clearance in the future. However, at the present time, Applicant's conduct with regard to his finances was not mitigated.

Under AG ¶ 2(a)(3), his conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports denying his request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a through 1.e: 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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WILFORD H. ROSS
Administrative Judge