



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



In the matter of:)	
)	
)	ISCR Case No. 15-01191
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

April 14, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is alleged to be delinquent on 13 debts in the total amount of \$20,221. All 13 delinquencies remain unresolved. Eligibility for access to classified information is denied.

Statement of the Case

On May 8, 2014, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On September 15, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 September 1, 2006.

On October 2, 2015, Applicant answered the SOR (Answer), and requested a hearing before an administrative judge. The case was assigned to me on January 7,

2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 20, 2016, scheduling the hearing for February 10, 2016. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf. The record was left open for receipt of documentation until February 17, 2016. Applicant failed to submit any documentation and the record closed on February 17, 2016. DOHA received the transcript of the hearing (Tr.) on February 19, 2016.

Findings of Fact

Applicant is 32 years old. He is a high school graduate and has attended some college. He has been employed by his current employer, a defense contractor, since 2013. He served on active duty in the Navy from 2002 to 2004. He achieved the rank of E-3. He has been divorced twice and has one minor child. His most recent divorce was finalized February 10, 2014. (GE 1.)

As listed in the SOR, Applicant was alleged to be delinquent on 13 debts in the total amount of \$20,221. Applicant admitted the debts alleged in SOR ¶¶ 1.a through 1.c, 1.i, and 1.j. He denied the delinquent debts alleged in SOR ¶¶ 1.d through 1.h, and 1.k through 1.m. His debts are identified in the credit reports entered into evidence. (Answer; GE 2; GE 3; GE 4.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant's debts consist of: a delinquent vehicle loan in the amount of \$8,204 (SOR ¶ 1.a); a delinquent furniture loan in the amount of \$4,078 (SOR ¶ 1.b); a delinquent credit account totaling \$2,563 (SOR ¶ 1.c); six delinquent medical accounts totaling \$1,427 (SOR ¶¶ 1.d through 1.g, 1.k, and 1.l); a delinquent debt owed to television service provider in the amount of \$89 (SOR ¶ 1.h); a credit union debt in the amount of \$2,000 (SOR ¶ 1.i); a delinquent credit card debt of \$1,391 (SOR ¶ 1.j); and a collection agent for a cell phone provider in the amount of \$469 (SOR ¶ 1.m). These debts became delinquent between 2011 and present. They continue to remain delinquent. He has not resolved or formally disputed any of his delinquent debts. (Tr. 18-32; GE 2; GE 3; GE 4.)

Applicant testified that he wanted to fix his credit but did not know how to resolve his debts because the creditors wanted more than he could afford on his limited income. He has not been in recent contact with his creditors. Applicant attributed his debts to his second ex-wife. (Tr. 18-19, 25.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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.

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." The applicant has the ultimate burden of persuasion to obtain 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. Decisions include, by necessity, consideration of the possible risk 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.

Section 7 of EO 10865 provides that adverse 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

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial indebtedness documented by the credit reports in evidence that substantiate all of the allegations. He has been unable or unwilling to address his delinquencies and has not had recent contact with the majority of his creditors. The evidence raises security concerns under both of these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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;
- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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's financial problems are ongoing. He has 13 unresolved delinquent accounts, as identified on the SOR. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant blamed his financial problems on his second divorce and ex-wife. His divorce may have been a circumstance beyond his control. However, he failed to act responsibly under the circumstances, and did not address his debts in a timely manner. Mitigation under AG ¶ 20(b) has not been fully established.

Applicant provided no evidence of financial counseling. Further, there are no clear indications that his financial problems are being resolved or are under control. All of his SOR-listed debts remain unaddressed. Mitigation under AG ¶ 20(c) has not been established.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. While Applicant denied some of his debts in his Answer because he did not recognize them, he has not provided evidence of any formal dispute or a basis for one. Mitigation under AG ¶ 20(e) has not been established.

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):

- (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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant honorably served in the Navy for two years. His financial problems are partially attributable to his recent divorce. However, he is a mature adult and responsible for his choices and financial obligations, and he lacks the resources to fully address his voluntarily incurred debts. 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 failed to mitigate the Financial Considerations security concerns.

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.m: **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.

Jennifer I. Goldstein
Administrative Judge