



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-01276
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

03/15/2016

Decision

HOGAN, Erin C., Administrative Judge:

On August 26, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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; 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 after September 1, 2006.

On September 17, 2015, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on October 16, 2015. Applicant was given 30 days to respond to the FORM. He did not submit a response to the FORM. On February 1, 2016, the FORM was forwarded to the Hearing Office. The FORM was assigned to me on March 1, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admits to SOR ¶¶ 1.a – 1.h, and 1.j, and denies the allegation in SOR ¶ 1.i. (Item 1)

Applicant is an employee of a DOD contractor seeking to maintain his security clearance. He has worked for his current employer since August 2002. His highest level of education is a Master's Degree. He is married and has four children. (Item 3)

On December 12, 2012, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). In section 26, Financial Record – Delinquency Involving Routine Accounts of the e-QIP, Applicant indicated that he had several delinquent accounts. (Item 3)

A subsequent background investigation revealed that Applicant has the following delinquent accounts: a \$225,804 mortgage account that was past-due in the amount of \$3,577. (SOR ¶ 1.a: Item 5 at 1); a \$313,488 home equity loan account that was past-due in the amount of \$53,404 (SOR ¶ 1.b: Item 5 at 2); a \$25,896 account that was placed for collection (SOR ¶ 1.c: Item 4 at 10; Item 5 at 2); a \$16,527 account that was placed for collection (SOR ¶ 1.d: Item 5 at 2); and a \$16,525 account that was placed for collection. (SOR ¶ 1.e: Item 5 at 2)

Additional delinquent accounts include: a \$2,046 charged-off account (SOR ¶ 1.f: Item 5 at 2); a \$1,542 charged-off account (SOR ¶ 1.g: Item 5 at 2); a \$22,668 judgment filed against Applicant in 2014 (SOR ¶ 1.h: Item 4 at 4; Item 5 at 3); a \$20,531 judgment filed against Applicant in 2014 (SOR ¶ 1.i: Item 5 at 3); and a \$10,507 charged-off account. (SOR ¶ 1.j: Item 4 at 5)

Applicant explains in his answer to the SOR that he first encountered financial problems when the startup company he worked for went bankrupt in November 2001. The company owed him over \$100,000 in pay and benefits which he did not receive. He was unemployed for eight months. During this period, he received unemployment benefits. He began to use retirement funds and credit cards for living expenses. (Item 2 at 3)

In 2002, Applicant was hired by his current employer. He was able to keep current with his debts through field assignments and overtime. He also took out home equity loans to restructure some of the debt. In May 2009, his field assignments were complete and the company was not paying overtime. As a result, his take-home pay was reduced by a third. He became delinquent on five credit cards and he was unable to keep up with the payments. (Item 2 at 3)

In November 2012, he sought legal counsel on what to do about his debts. His lawyer initially advised him to file for bankruptcy. He then advised him to stop all credit card payments and to revert to a cash only budget. His lawyer advised him to stop making house payments in hopes that Applicant would qualify for the Home Affordable

Refinance Program (HARP). If the banks were not willing to negotiate lower payments, the lawyer advised to let the house be foreclosed and then let the bankruptcy court address the debt. Applicant worked on this strategy for three years. Only one of his two mortgage companies was willing to lower the payments. Applicant claims it was not enough to work off his debt. (Item 2 at 3)

Applicant's lawyer advised him to consider letting the house go to foreclosure and then file for bankruptcy. In the alternative, the lawyer advised Applicant to attempt a short sale of his house and then file for bankruptcy. Applicant and his wife opted for the short sale route. They decided against filing for bankruptcy and focused on repaying their creditors understanding that it was going to take years. Applicant claims they successfully sold the house at a short sale. They are now working with creditors on a priority basis to satisfy the debt obligation. (Item 2 at 3)

The status of the delinquent debts are:

SOR ¶ 1.a: \$225,804 mortgage account. Applicant claims a short sale of his house was completed on June 24, 2015, and this account has been paid in full. He did not provide any documentation verifying the short sale and his assertion that the mortgage is paid.

SOR ¶ 1.b: \$313,488 second mortgage account. Applicant claims a short sale of his house was completed on June 24, 2015. Applicant claims the bank forgave the remainder of the loan after the short sale and the account is closed. He did not provide any documentation verifying the short sale and his assertion that the second mortgage is resolved.

SOR ¶¶ 1.c through 1.g, and 1.j. Most of the debts are delinquent credit card accounts. The approximate total is \$73,043. Applicant intends to pay these debts in the future based on his budgeting process and financial plan. The debts remain delinquent and unresolved.

SOR ¶ 1.h: a \$22,668 judgment filed against Applicant in 2014 for a delinquent credit card account. Applicant claims a settlement was agreed upon and he is saving to make a one-time payment. He intends to pay this within the next eight months. Applicant did not provide documentation about the settlement.

SOR ¶ 1.i: a \$20,531 judgment filed against Applicant in 2014 for a delinquent credit card account. Applicant claims he paid the judgment in full on August 27, 2015. He did not provide documentation proving that the judgment was paid.

Applicant did not provide any information about his household financial situation such as a budget. He also did not provide any character references, performance evaluations, or awards that could be considered under the whole person.

Policies

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 must be considered when determining 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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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 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

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.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations) apply to Applicant's case. Applicant encountered financial issues with the first and second mortgage of his home, totaling \$539,292. In addition, he had eight delinquent accounts, most of them credit cards, a total approximate amount of \$116,242. Applicant has a history of not being able to meet his financial obligations.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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.

AG ¶ 20(a) does not apply. Applicant did not incur his recent delinquent accounts under circumstances that indicate it is unlikely to recur. He was unable to pay his mortgage and incurred significant delinquent credit card debt totaling over \$116,000. His financial issues are ongoing.

AG ¶ 20(b) partially applies in relation to Applicant's eight-month period of unemployment beginning in November 2001. However, he has been employed full-time with his current company since August 2002. Applicant's present financial problems are not related to an eight-month period of unemployment that occurred 15 years ago. While Applicant lost 1/3 of his take-home pay in May 2009, as result of the loss of field duty pay and overtime, he should not have relied on either payment as regular income. Once these payments stopped, Applicant did not adjust his budget accordingly as a result of the reduction in income. I cannot conclude he acted responsibly under the circumstances.

AG ¶ 20(c) does not apply. There is no evidence that Applicant attended financial counseling. He consulted a lawyer about planning a strategic default on his mortgages and a possible bankruptcy. He did not mention whether he took any financial management classes, such as learning how to budget. The majority of Applicant's debts remain unresolved. Applicant did not provide information about his monthly budget. Considering the large amount of debt owed, Applicant's financial problems are not going to be resolved in the near future.

AG ¶ 20(d) possibly applies to the mortgage debts alleged in SOR ¶¶ 1.a and 1.b and the debt alleged in SOR ¶ 1.i because Applicant claims these debts are resolved. However, he provided no documentation corroborating that his house was sold at a short sale; that the second mortgagor forgave the remainder of the loan upon the short sale; and the debts were paid. Applicant claims to have entered into a settlement agreement regarding the debt alleged in SOR ¶ 1.h. He did not provide a copy of the settlement agreement and, at the close of the record, no payments had been made towards the settlement. For these reasons, AG ¶ 20(d) is given little weight.

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 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.

In requesting an administrative determination, Applicant chose to rely on the written record. However, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances that would mitigate financial considerations security concerns. While Applicant states that he resolved his first and second mortgage by a short sale and resolved the debt alleged in SOR ¶ 1.i. He provided no evidence corroborating this happened, such as loan documents, receipts, and statements from the creditors verifying that the debts are resolved. Even if he resolved these debts, Applicant still has over \$95,000 in unresolved delinquent debts. Applicant did not provide information about his budget so his overall financial status is unknown.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's employment record. Applicant may be able to demonstrate a track record of resolving his financial obligations at some point in the future. At present, it is too soon to make this conclusion. The security concerns raised under financial considerations are not mitigated.

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.j:	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.

ERIN C. HOGAN
Administrative Judge