



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 15-01564 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

04/29/2016

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny him eligibility for access to classified information. Applicant did not present sufficient evidence to rebut, explain, extenuate, or mitigate the facts proven by the written record concerning his history of financial problems. Accordingly, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on October 1, 2015, the DoD issued a Statement of Reasons (SOR) detailing security concerns. On October 16, 2015, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department

¹ 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.

Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated November 23, 2015. The FORM contained seven attachments (Items). On December 1, 2015, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. He did not reply within the 30-day period from receipt of the FORM. The case was assigned to me on April 22, 2016.

Findings of Fact

In his Answer to the SOR, Applicant asserted that on October 16, 2015, he settled and paid the charged-off account listed in SOR 1.c (\$409) and asserted that on August 31, 2015, he paid the collection account listed in SOR 1.f (\$5,488). He admitted owing the remaining SOR delinquent obligations. He provided no documentation supporting his assertion of payments. He asserts his wife's day-care business downsized resulting in less income. Additionally, he borrowed money from his 401(k) retirement plan² in an unsuccessful attempt to save two rental homes. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 56-year-old staff analyst who has worked for a defense contractor since April 1982 and seeks to retain a security clearance. (Item 3) In September 2009, he was granted access to sensitive compartmented information (SCI).

Applicant is currently married and has two children ages 21 and 33. He had two previous marriages which ended in divorce in 1994 and 2000. In 2007, Applicant's wife's day-care business downsized resulting in less income. (Item 4) In his September 2014 enhanced subject interview (ESI), his delinquent debts were reviewed. At that time, he had no knowledge concerning some of the debts. He stated he needed to look into his finances closer and contact creditors to make arrangements to bring the accounts current.

In Applicant's July 2014 Electronic Questionnaire for Investigations Processing (e-QIP), he indicated he was delinquent on a credit card in the amount of \$2,300 (SOR 1.b, \$2,274) due to the downsizing of his wife's business. (Item 3) He stated he had worked out a payment plan with the creditor. (Item 3) However, the balance on the account has not been reduced. He asserted he paid two debts, but provided no documentation. The FORM instructed him of the importance of providing documentation to support his assertions of payment. No documents were received.

The mortgage debt listed in SOR 1.a (\$11,751) appears in Applicant's July 2014, January 2015, and June 2015 credit reports as having been 120 days late. (Items 5, 6, 7) There are two entries on his September 2015 credit report for this creditor, one which indicates \$11,751 is past due and a second entry indicating nothing is past due or owing on the same account. (Item 7) In November 2014, the mortgage of \$175,500 was sold to another mortgage company. He has made timely payments on his mortgage to the

² Applicant's withdrawal from his 401(k) plan resulted in a 2007 IRS garnishment of \$5,456. (Item 4)

new company. Before the mortgage was sold Applicant was delinquent on his payments in March 2013, December 2013, and January 2014. (Item 6)

The \$2,274 charged-off debt in SOR 1.b remains delinquent. (Item 5, 7) Applicant asserted he settled a \$409 charged-off credit card account (SOR 1.c) for half the valued owed and paid it in October 2015. He provided no documents showing payment. The delinquent debt appears on his 2014, January 2015, and September 2015 credit report.³ (Item 5, 6, 7)

There is no evidence the delinquent, collection debts listed in SOR 1.d (\$1,154) and SOR 1.e (\$1,273) have been paid. (Item 5) Applicant asserts he paid the collection debt listed in SOR 1.f (\$5,488) in August 2015. (Item 2) His July 2014 credit report lists two collection accounts, with two different account numbers with this creditor. The credit report indicates \$5,488 and \$11,751 are owed the creditor. (Item 5)

Applicant has not provided documentation showing that the delinquent SOR obligations are paid, settled, subject to a repayment agreement, in dispute, cancelled, forgiven, or otherwise resolved. His claims and assertions in his answer to the SOR are not supported by documentation. Applicant failed to respond to the FORM, thereby failing to provide documentation supporting his assertions of payment of two of his delinquent debts.

Law and 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 must be considered 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 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

³ The September 2015 credit report also lists a zero balance owed this same creditor, but lists a different account number for the account with the zero balance. (Item 7)

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 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or 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 or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed.

Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage their finances to meet their financial obligations.

Applicant owes more than \$10,500 for three collection accounts and two charged-off accounts. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

None of the mitigating factors for financial considerations fully apply. Applicant's financial difficulties are both recent and multiple. He has been employed since 1982. In July 2014, he was made aware of the Government's concerns about his delinquent debt. At that time, he said he had to look into his finances and contact the creditors to make arrangements to bring his accounts current. (Item 4) He took no action until August 2015 and October 2015, when he asserted he paid two delinquent accounts. He provided no documentation showing payment on any of his debts. By failing to make payments he has failed to act responsibly under the circumstances. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. There is no showing of a good-faith effort to satisfy the delinquent obligations. One of the two debts he asserts was paid he asserts was settled for approximately \$200.

The evidence supports a conclusion that Applicant has a problematic financial history within the meaning of Guideline F. This conclusion is based on the findings of fact that show Applicant has done very little to address his financial problems. With that said, there is little concern about the mortgage debt listed in SOR 1.a (\$11,751). He was past due three times on his mortgage. In November 2011, that mortgage was sold to a different mortgage company and his credit report indicates he has paid the new company "as agreed." This debt is found in favor of Applicant.

AG ¶ 20(b) does not apply. Applicant states in 2007 his wife's day-care business downsized resulting in less income. This is a factor beyond his control, but occurred more than eight years ago and he failed to show how that loss of income has impacted on his current finances. He has not documented payment of his debts or even documented that he has had recent contact with his creditors. The mitigating condition listed in AG ¶ 20(c) does not apply since there is no evidence he received financial counseling, nor is there a clear showing that his financial obligations are being addressed. The mitigating condition listed in AG ¶ 20(d) does not apply because he has failed to document payment on any of the delinquent accounts.

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. Applicant has failed to document any payment on his delinquent accounts, except for his past-due mortgage payments. He is current on his mortgage payments with his current mortgage company. He has been aware of the Government's concern about his delinquent debts since September 2014, which was reinforced by the October 1, 2015 SOR. None of the SOR debts have been paid, nor is there is evidence indicating he has recently contacted his creditors.

In requesting a decision without a hearing, 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 and facts that would mitigate the financial considerations security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By relying solely on his scant responses to the SOR, he failed to mitigate the financial considerations security concerns.

Applicant has not presented sufficient information to rebut, explain, extenuate, or mitigate the facts proven by the written record. The totality of the written record does not show that Applicant has a reasonable plan to resolve the delinquent debts or that he has demonstrated a firm commitment to adhering to such a plan. The concern over Applicant's problematic financial history creates doubt about his current reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

Accordingly, I conclude that Applicant did not meet his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

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, Financial Considerations: **AGAINST APPLICANT**

Subparagraph 1.a: For Applicant

Subparagraphs 1.b –1.f: 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.

CLAUDE R. HEINY II
Administrative Judge