



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



In the matter of:)
)
) ISCR Case No. 15-01659
)
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

06/20/2016

Decision

CREAN, Thomas M., Administrative Judge:

Applicant provided insufficient documentation to mitigate security concerns about financial considerations under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On July 28, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 3) This was his first application to be granted access to classified information. Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on September 11, 2014. (Item 4) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On September 21, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in the DOD on September 1, 2006.

Applicant answered the SOR on November 5, 2015. Of the eight allegations of delinquent debt, Applicant admitted two (SOR 1.a and 1.b), denied five (SOR 1.d – 1.h) as paid or being paid, and disputed one (SOR 1.c). He elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on January 11, 2016. Applicant received a complete file of relevant material (FORM) on January 21, 2016, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not respond to the FORM. I was assigned the case on May 5, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview with an OPM agent (Item 4) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the summary. Applicant did not respond to the FORM so he did not raise any objection to consideration of the information in the Personal Subject Interview. Any objection to the information is waived. I will consider information in the Personal Subject Interview in my decision.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 58 years old, and has worked as a crane operator and rigger for a defense contractor since July 2014. He completed a journeyman crane operator course in 1979, and was employed by civilian companies as a journeyman crane operator until July 2014. He is married with two adult children. (Item 3, e-QIP, dated July 28, 2014; Item 4, Personal Subject Interview, dated September 11, 2014)

The SOR lists, and credit reports (Item 5, dated August 7, 2014, and Item 6, dated August 17, 2015) confirm the following delinquent debts for Applicant: a credit card charged off for \$4,621 (SOR 1.a); a delinquent mortgage past due for \$14,897 on a balance of \$150,877 (SOR 1.b); a charged-off credit union account for \$1,212 (SOR 1.c); a credit card in collection for \$2,040 (SOR 1.d); a student loan in collection for \$122 (SOR 1.e); a credit card in collection for \$6,053 (SOR 1.f); a charged-off credit card account for \$909 (SOR 1.g); and a student loan in collection for \$6,555 (SOR 1.h).

The total amount of the alleged delinquent debt is approximately \$172,389, of which \$150,877 is the home mortgage.

Applicant attributes his delinquent debts to his lack of funds. He claims he did not have sufficient funds to continue to pay the student loans he co-signed for his daughter's education. He stopped paying the loans when he did not have sufficient income to make payments. He purchased his house in 2002 and became delinquent on mortgage payments in 2012. Applicant told the security investigator that he was making additional payments to catch up on his mortgage and would be current with his mortgage by November 2014. Applicant claims that he paid or is paying the remaining delinquent debts. He did not provide any documentation to corroborate the status of his mortgage or any other debt payments. He reiterated that he would resolve all of his debts by November 2014. Department Counsel noted Applicant's failure to provide proof of payment of any of the debts in the FORM. Despite this warning, Applicant still did not provide any payment documents by not responding to the FORM.

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 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.

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

Analysis

Financial Considerations

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, thereby raising 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 ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect 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 creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay 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 finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant's has a history of delinquent debts as documented in his credit reports, by his admissions to the OPM investigator, and his response to the allegations in the SOR. The one debt Applicant denied is listed as delinquent on the credit reports. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises both an inability and an unwillingness to pay delinquent debt. Once the Government has established delinquent debt, the Applicant has the responsibility to refute or mitigate those debts.

I considered the following Financial Consideration Mitigating Conditions under 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;

(b) the conditions that resulted in the financial problems 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; and

(d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

These mitigating conditions do not apply. Applicant claims to have paid or is paying most of his delinquent debts. He claims to be current with his mortgage, but he did not provide any information to establish that he is paying or has paid any delinquent debts. He did not provide any information to establish that his mortgage is current. He failed to show that he acted reasonably and responsibly to resolve his financial problems. The lack of payment information does not support a finding of responsible financial management. His financial problems are not under control. Based on Applicant's acknowledgment of his debts and his failure to verify his stated arrangements to pay his debts, it is clear that he has not been reasonable and responsible in regard to his finances. His lack of reasonable and responsible action towards his finances is a strong indication that he will not protect and safeguard classified information. Applicant did not present sufficient information to mitigate security concerns for financial considerations.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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.

