



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



In the matter of:)	
)	
-----)	ISCR Case No. 15-02163
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie Mendez, Esquire
For Applicant: *Pro se*

06/21/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On September 24, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) 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 DOD on September 1, 2006.

In an undated response, Applicant admitted six of the seven allegations raised under Guideline F, and failed to address one allegation. He also requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on April 12, 2016. The matter was scheduled on April 29, 2016, for a May 18, 2016, hearing. The hearing was convened as scheduled.

The Government offered three documents, which were accepted without objection as exhibits (Exs.) 1-3. Applicant offered testimony and two items, which were accepted without objection as Exs. A-B. The record was held open through May 23, 2016, in the event the parties wished to submit additional material. The transcript (Tr.)

was received on May 26, 2016. On May 24, 2016, the Government forwarded an additional item received from Applicant, a credit report, accepted without objection as Ex. C. The record was then closed. After review of the record as a whole, I find that Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 58-year-old computer support specialist who has worked in the same position for 13 years. He completed high school and earned an associate's degree in computer science. He has worked in the computer field since 1983. Applicant is married and has three children, one of whom is married and lives apart from the family. At issue is a \$57,000 second mortgage as well as several consumer debts totaling about \$9,600.

Between 2006 and 2007, Applicant first encountered financial difficulties when he found himself overextended on the mortgages to a new home he purchased. That house ultimately went into foreclosure in 2008. Following this event, other debts were acquired. There is no documentary evidence reflecting any efforts to address his obligations during this time. Then, in or before 2014, his salary was reduced from about \$70,000 to \$40,000. His approximately \$1,400 net monthly income is supplemented by his wife's income as a teacher's assistant, although her income is unknown.

Applicant was recently tentatively approved for a new home loan, with hopes to move from their \$1,500 a month apartment rental by the end of June 2016 when their current lease expires. A local lender told him that if he satisfied about \$7,500 in delinquent debts, obligations still appearing on his current credit reports, he could qualify for a mortgage between \$250,000 and \$350,000.¹ At this point, however, he has not personally met with the potential lender or ascertained what his approximate monthly payments will be.² He is unaware of what the interest rate will be on the loan, leaving the details to his wife to discover. Applicant and his wife were set to meet with the potential lender after the hearing, as they prepare to discover a way to satisfy the \$7,500 in debts posing concern with the bank. They hope to acquire that sum by borrowing money from family members. They will not have money for a down payment, so the home will be entirely financed. His daughter is planning on moving in with them to help them defray expenses.

No longer maintaining a savings account, Applicant does not have a retirement account. He is unaware of what balances he has in his checking account after monthly obligations have been paid. He agreed that the family is living "paycheck to paycheck."³

¹ Tr. 42.

² Applicant concedes that he cannot afford a monthly mortgage payment of more than \$1,500, the amount he currently expends on rent. Tr. 45.

³ Tr. 45.

He concedes that he needs to get another job because his present employment does not pay him a sufficient income. Before his pursuit of a new home and his discovery that he could be eligible for a mortgage if he satisfied about \$7,500 in delinquent debt, Applicant remembers, at some point, trying to address his smaller debts, but he has no documentary evidence indicating any such attempts.⁴ He has not received financial counseling.⁵ He does not appear to understand that a credit report entry deleted due to its age does not necessarily relieve the debtor of the underlying financial obligation.

The debts at issue are reflected in the SOR as follows:

1.a – Adverse judgment from 2011 in the approximate amount of \$1,350. Applicant does not know the basis for this judgment. He does not think it has been satisfied.⁶ He has not checked with the court or the creditor to verify the status of the debt. He believes he made some payments on this and other debts, but does not know exactly because his wife is the one who made bill payments in the family.

1.b – Charged off credit card account in the approximate amount of \$869. It was subsequently sold to another lender. He believes the balance was lowered by the lender, but provided no documentary evidence to that effect.⁷

1.c – Bank-related account past due 120 days or more in the approximate amount of \$48,532 with a balance of \$57,942. This debt is related to a home purchased in 2006 with the aid of two mortgages and an unknown portion of the approximately \$200,000 in proceeds he received from the sale of his previous residence. The balance of the proceeds from the sale of his prior home was put into cash reserves. This debt concerns the smaller, second mortgage. By 2007, he was unable to make payments on the mortgage.⁸ An attempt at a short sale was unsuccessful, and a 2008 foreclosure followed, which satisfied the larger, first mortgage. Applicant notes that the mortgage at issue no longer appears on his credit report. He has never received any correspondence from the lender or a successor indicating that the debt was written off or forgiven, nor has he attempted to contact the original lender.

1.d – Collection account in the approximate amount of \$208. Applicant does not know the status of this delinquent debt.⁹

⁴ Tr. 46-47.

⁵ Tr. 50.

⁶ Tr. 22.

⁷ Tr. 24-25. "They lowered it. Once they gave it to another person I think they cut it in half or something."

⁸ Tr. 28.

⁹ Tr. 32.

1.e – Collection account for a utility company in the approximate amount of \$972. Applicant does not believe that this has been paid.¹⁰

1.f – Collection account for telecommunications entity in the approximate amount of \$1,010. This is related to charges remaining on a two-year contract for service that continued after Applicant discontinued service. In 2014, he tried to negotiate a settlement with the company, but to no avail. The amount is still outstanding.

1.g – Charged-off account in the approximate amount of \$5,205. The mini-van at issue was repossessed in 2009. Applicant has not contacted the company, noting “this has to be a mistake because they took the car and we . . . we haven’t received any mail . . . about this after that.”¹¹ No evidence of payments toward this debt was presented.

Applicant recently decided to look into the prospect of buying a new home. They were apprised of negative entries on Applicant’s credit report. He introduced a recent credit report reflecting fewer negative entries.¹² In order to address the cited problems, he entered into an agreement with a debt consolidator, with which he met shortly before the hearing. Before that, he and his wife discussed making an arrangement with a debt consolidator, but never settled on one.

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 are 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, 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 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.

¹⁰ Tr. 33.

¹¹ Tr. 39.

¹² Ex. C.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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. 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).

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, there is credible evidence showing Applicant has acquired delinquent debts in excess of \$58,000, invoking financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance related security concerns:

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.

Applicant's initial financial distress began when he purchased a home in 2006 for which, apparently, he did not properly budget and which, inevitably, he could not afford. Within two years, it went into foreclosure. Today, he is poised to acquire a new home with a new mortgage based on his current credit report, which no longer reflects all the debts at issue, due to the age of the obligations, not their satisfaction. He does not yet know what his monthly payment obligations will be or what interest rate range will be at issue. Moreover, he is borrowing money to satisfy the \$7,500 debt the lender noted in Applicant's current credit report, thus transferring that financial obligation from creditors to family members. At this stage in his search for a new home, which is to be 100% mortgaged with no money down, it is unclear what he can afford to purchase and how he will stay timely on his current income.

The delinquent debts at issue are multiple in number, with many being years old. He did suffer a notable decrease in salary in 2013 or 2014. He failed to offer any documented evidence, however, of efforts to pay for or manage his needs on the reduced income or to work with his lenders. Therefore, AG ¶ 20(b) only applies in part.

Applicant has not received financial counseling. There is little to no documented evidence that any of the debts at issue have been addressed or are currently in the process of being repaid. At best, he is now poised to repay those accounts which are still reflected on his credit report because they pose an obstacle to his obtaining a new mortgage. As a strategy, this fails. First, it fails to address all of the debts at issue, which appear to still be owed and undisputed. Second, it simply transfers his financial obligations from professional creditors to family. With no concrete evidence of progress made or a reasonable plan for addressing his debt, no other mitigating conditions apply.

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). AG ¶ 2(c) requires that the ultimate determination must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Here, I considered the

potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a highly credible, straight-forward, and hard-working man who has suffered financial obstacles over the past decade. Unfortunately, the delinquent debts at issue did not disappear when they were deleted from his credit report, but remained existent and largely unaddressed. In this process, their deletion does not establish a track record of financial responsibility. Further, while he did suffer from a reduction in salary in the past few years, he presented no documentary evidence showing what he did to compensate for this drop, although he did mention his hopes to find another job, have his daughter move in with his family, and purchase a new home rather than rent.

This process expects that an applicant employ a reasonable plan to address his delinquent debts. It then requires documentary evidence that the plan was successfully implemented. Applicant failed to do that. He also failed to pursue financial counseling, which might have given him better insight into the credit reporting process, the budgeting aspects of acquiring a realistic mortgage, and strategies for addressing the debts at issue. Under these facts, however, I find that Applicant has not mitigated financial considerations security concerns.

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.g:	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.

Arthur E. Marshall, Jr.
Administrative Judge