



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



In the matter of:)	
)	
)	ISCR Case No. 14-03473
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On October 31, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a review based on the written record in lieu of a hearing. The case was assigned to me on April 27, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated February 9, 2015¹. Applicant received the FORM on February 12, 2015. Applicant timely submitted a response and documentation to the FORM. Based on a review of the case file, eligibility for access to classified information is granted.

¹The Government submitted eight items for the record.

Findings of Fact

In his answer to the SOR, Applicant admitted all but one of the SOR allegations under Guideline F.

Applicant is 31 years old. Applicant is divorced and has three children. He is pursuing a technical degree to enhance his employment opportunities as well as an undergraduate degree at night. He has been employed with his current employer since 2011. (Item 3) This is Applicant's first request for a security clearance. (Item 4)

The SOR alleges seven delinquent debts, including judgments, medical accounts and a vehicle repossession totaling about \$44,000. (Item 3)

Applicant acknowledges that the delinquent debts occurred during a time when he was a self-employed business owner of a title company. He was the sole provider for his family when the economic crisis occurred in the United States. As the economy worsened, his business declined and his debt rapidly piled up. He found himself in an overwhelming situation. He did not have the income to cover his expenses. (Item 3, Answer to SOR) Applicant constantly sought overtime opportunities and other work to obtain more money to settle his accounts. Applicant transitioned from a successful business man to a person who gained employment making \$13.50 an hour. However, he had no choice but to accept the position. (Item 3)

Applicant sought the help of a credit counseling service for a solution to his financial difficulties. He did not ignore his creditors. Applicant received advice that the best solution was to negotiate settlements. At first, he could not accomplish this because the settlement amounts were more than he could afford. He sought the advice of another credit repair company with successful results. (Item 4)

The Government was provided with evidence that Applicant has satisfied the two judgments listed in SOR 1.a and 1.b. (Item 3)

As to the allegation in SOR 1.c, Applicant made payments on the account since last year. He provided documentation showing that he made his final payment on January 29, 2015. The account balance is zero and the account is paid in full. (RESPONSE TO FORM, Item C).

As to the SOR allegation 1.d, initially, he was not aware of the medical account. He investigated the matter and learned it had been paid in full on February 23, 2014. Applicant provided documentation.

Applicant stated that SOR 1.e represents his co-signature of a vehicle. He provided documentation that he settled the account in November 2014. The remaining payment of \$877, leaves the account with a zero balance. (Item 3) As to 1.f, this

account is a duplicate of 1.b, which has been satisfied. He provided documentation verifying it is a duplicate of 1.b.

Applicant submitted documentation that the account in 1.g is settled and paid in full. The payment of \$2,000 was received in February 2015. (Item 3)

Applicant has a steady job with a good income. He is pursuing a career in IT, which will enable him to live within his means and pay his debts. He continues to obtain certifications in IT that will provide him with more job opportunities.

Applicant has net monthly income of \$2,300. After expenses and his auto loan, which is current, he has a net remainder of \$125. He works overtime whenever possible and has assets of about \$1,500.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

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

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted that he had delinquent debts. His credit report confirms the debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant resolved his debts in the past year. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) partially applies.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies. Applicant has given reasons for his delinquent debts. His business downturn and low income in jobs were beyond his control. He was proactive as soon as he was employed in a well-paying position, but did not have sufficient income to pay all debts. He presented documentation that his accounts are paid. He acted responsibly by trying to work with a credit repair company.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) also applies. Applicant has been steadily working to pay his debts. He sought advice and began to settle accounts. He did not ignore his creditors. He received financial counseling. FC MC 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) applies.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

