



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 14-03786
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)
Applicant for Security Clearance)

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro se*

09/23/2015

Decision

HOWE, Philip S., Administrative Judge:

On December 6, 2013, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On January 5, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) 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 Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on January 22, 2015. He answered the SOR in writing on February 17, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 30, 2015, and I received the case assignment on April 2, 2015. DOHA issued a Notice of Hearing on May 1, 2015, and I convened the hearing as scheduled on May 15, 2015. The Government offered Exhibits 1 through 3, which were received without objection.

Applicant testified and submitted Exhibits A through E, without objection. DOHA received the transcript of the hearing (Tr.) on May 26, 2015. I granted Applicant's request to keep the record open until June 1, 2015, to submit additional matters. Applicant never submitted any additional exhibits. The record closed on June 1, 2015. 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 admitted the factual allegations in ¶¶ 1.a to 1.g, and 1.j of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.h, 1.i, and 1.k to 1.p of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 38 years old. He served in the U.S. Navy from 1989 to 1992, and 1997 to 2007. He received an honorable discharge as an E-6. He is married and has two children. His wife works as a hospital food service attendant. He started to have financial problems at his last Navy duty assignment. (Tr.16-20, 27, 35, 77; Exhibit 1)

Applicant has 16 delinquent debts listed in the SOR. They total \$52,601. He admits eight debts and denies the remaining eight debts. Applicant has an additional eight delinquent debts not listed in the SOR totaling \$41,613. The total amount of debts combining the SOR debts and the unlisted debts appearing in Exhibit 3 is \$94,314. Applicant also owes \$2,000 for 2014 Federal income tax obligation that he is paying on an installment agreement at \$100 monthly. Applicant admitted at the hearing he could not guess at the total amount of his debt at that time because it would include interest and penalties. (Tr. 52-75; Exhibits 2, 3)

Applicant purchased a house in June 2004 at his last duty station. He paid \$340,000 for it. He lived there for two years and then moved to another city after leaving the Navy. He rented the first house but the tenants stopped paying the rent and it took five months for the property management company to evict them. He paid the mortgage using his credit cards. He tried to sell the house from 2008 onward. Applicant gave two versions of what happened to this house, first that it was foreclosed and then that the bank did a short sale. It is logical that the bank lender foreclosed and sold the house when Applicant stopped paying the mortgage. Applicant does not know how much was paid for the house or if he owes that bank lender any additional money. (Tr. 18-20, 37-40, 46, 91)

Applicant moved to another city and purchased another house for \$180,000 in March 2007 while continuing to own his first home. He moved on the expectation of a job, but that opportunity did not occur. He found another job earning about \$30,000 annually. He also had savings of about \$30,000 that he used to pay the mortgages on both houses while he tried to sell them. He was unemployed from April 2007 to October 2007. In 2009 he started having problems paying the mortgage on the second home. It

was foreclosed upon in 2011. He received an IRS Form 1099 for \$8,000 on that transaction. He depleted his savings in the efforts to retain both houses. (Tr. 40-51, 91)

Applicant obtained a position in another city in late 2011, where he lives at the current time. As he was moving, his van was repossessed. He rents a home now. He and his wife live from paycheck to paycheck. He does not have any savings. He does not have credit cards. He uses a debit card. Applicant's new job pays about \$30 per hour. He was also unemployed from June to September 2013, during which time he trained as a truck driver. He never worked as a trucker. He has been consistently employed since November 2013. (Tr. 22, 23, 25, 26, 30, 73-82; Exhibit 1)

Applicant has not paid any of the delinquent debts listed in the SOR. These debts include two for vehicles he purchased within the past ten years, credit card debts, property taxes for the first house he owned, money owed on an apartment lease, furniture he purchased, a credit card processing machine when he tried to start a home business, a utility bill, two telephone bills, and three medical debts (Subparagraphs 1.a to 1.p). (Tr. 52-62; Exhibits 2, 3)

Applicant owes \$2,636 on a state tax lien that he did not recognize as being owed. The lien was filed against him in August 2014. This debt is not listed in the SOR. (Tr. 63; Exhibit 3)

Applicant owes several other debts not listed in the SOR. An energy company is owed \$384, on which Applicant says he paid \$100 on April 6, 2015. (Tr. 64; Exhibits 2, 3)

Applicant owes \$498 on a medical debt. He claims his physician sends the bill to him first expecting payment, and then submits the bill to the insurance company. This debt is unpaid and not listed in the SOR. (Tr. 65; Exhibits 2, 3)

Applicant has a second medical debt for \$250 that is unpaid. It is not listed on the SOR. (Tr. 66; Exhibits 2, 3)

Applicant owes two education loans for \$5,831 that remains unpaid. They are not listed in the SOR. Applicant no longer attends college. (Tr. 67; Exhibits 2, 3)

Applicant owes \$791 on a credit card. This debt was for furniture his wife purchased. This debt is unpaid and is not listed in the SOR. (Tr. 68; Exhibits 2, 3)

Applicant owes \$3,033 on a credit card debt. It is not listed in the SOR and is unpaid. (Tr. 69; Exhibits 2, 3)

Applicant owes \$27 on an internet debt. It is unpaid and not listed in the SOR. Applicant claims he paid it and has a receipt. He was given until June 1, 2015, to submit that receipt but never did so. (Tr. 69; Exhibits 2, 3)

Applicant has a charged-off debt owed to a bank for \$22,974. Applicant stated it was for a credit card. This debt is not listed in the SOR and has not been paid. (Tr. 70, 71; Exhibits 2, 3)

Applicant owes \$2,302 to a bank. This debt is owed on an automobile purchase. Applicant did not know what this debt was borrowed for originally. It is unpaid and not listed on the SOR. (Tr. 71; Exhibits 2, 3)

Applicant owes \$2,887 on a bank credit card. This debt is not listed in the SOR. It remains unpaid. (Tr. 71; Exhibits 2, 3)

Applicant would like to file bankruptcy but was told by one attorney the fee would be \$10,000 for Applicant and his wife, each. Also, someone told him bankruptcy would ruin his chances for a security clearance. He claims he reduced his monthly expenditures as much as he can. He has not had any regular financial counseling except when he lived in his former state. Applicant has not taken any action to resolve his debts except to pay his federal tax debt for 2014 of \$2,000 on an installment agreement. (Tr. 21, 74, 75, 82)

Applicant submitted five character letters. They all state Applicant is an excellent worker, law abiding, and not a security threat. They also consider him to be a person who respects the requirements of classified information. (Exhibits A-E)

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 are useful 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 (AG ¶ 2(a)). 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has 16 delinquent debts totaling \$52,601, listed in the SOR. He accumulated that delinquent debt from 2007 to the present time. It remains unpaid.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two conditions may be applicable:

(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; and

(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.

Applicant was unemployed for six months in 2007 and three months in 2013. However, he has been consistently employed since November 2013. His wife works and has during their marriage. Applicant blames the purchase of his two homes, the inability to afford them after he moved out of them because he took jobs in other areas, and the mortgage lenders' refusal to work with him to modify his loans. The periods of unemployment were not long enough to adversely affect his finances, especially because he stated he had \$30,000 in savings when he separated from the Navy. Further, he continued to incur delinquent debt including another \$41,613 of unpaid obligations not listed in the SOR. The total debt owed is \$94,214. Applicant has not acted responsibly under the circumstances, especially on the price he paid for his first house while on a Navy salary. AG ¶ 20 (b) does not apply.

AG ¶ 20 (c) has no application. Applicant had financial counseling for an unstated period in his prior state. He did not testify how long the counseling lasted. There is no showing that it had any beneficial effect on his debts. This mitigating condition is not established.

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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 unpaid delinquent debts dating from 2007. The SOR lists 16 debts. However, the credit report exhibits show additional debts that bring the total owed to \$94,214. Applicant has not repaid any of the debts except the federal tax debt. He also has a state tax lien. Applicant has no plan to repay his debts. He has not taken any action to file bankruptcy. He claims he reduced his expenses as much as he can and lives from paycheck to paycheck. The size of the debts makes Applicant potentially subject to pressure, coercion, exploitation, or duress. The additional debts show that there has not been any behavioral change or rehabilitation. Applicant voluntarily incurred these debts. He immersed himself in this financial situation.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations. I conclude the whole-person concept against Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a to 1.p:	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.

PHILIP S. HOWE
Administrative Judge