



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



In the matter of:)
)
) ISCR Case No. 14-03834
)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

01/12/2016

Decision

WHITE, David M., Administrative Judge:

Applicant incurred 18 delinquent debts, totaling more than \$43,000. He demonstrated neither sufficient means nor efforts toward resolving any of them. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on November 25, 2013.¹ On October 7, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² The action was taken

¹Item 3.

²Item 1.

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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on October 27, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on June 25, 2015. A complete copy of the File of Relevant Material (FORM)⁴ was received by Applicant on August 24, 2015, and he was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant timely submitted a statement in response to the FORM, but sent it to the DoD CAF instead of the Defense Office of Hearings and Appeals. On November 2, 2015, Department Counsel indicated that he had no objection to consideration of Applicant's FORM response, which is admitted into the record as Applicant Exhibit (AE) A. I received the case assignment on November 9, 2015.

Findings of Fact

Applicant is 36 years old. He has worked continuously in various information technology supervisory positions since January 2010, when he received an Honorable medical discharge from the U.S. Navy after eleven years of service. He is twice divorced, with no children.⁵

In his response to the SOR and the FORM, Applicant admitted the truth of the 18 SOR allegations concerning his delinquent debts. Unfortunately, the drafter of the SOR failed to correctly interpret the credit report on which the allegations were based, and Department Counsel did not mention or request correction of the numerous factual errors in the SOR allegations in the FORM. The allegations were based on the OPM Full Data Credit Report obtained on January 7, 2014.⁶ A table illustrating the nine incorrect SOR allegations and the correct information from that credit report is provided below. The net result of the errors reflects a total delinquent indebtedness of \$43,192 instead of the total \$44,188 that is alleged in the DoD CAF SOR.

³Item 2.

⁴Department Counsel submitted six Items in support of the SOR allegations. Item 6 is inadmissible and will not be considered or cited as evidence in this decision. It comprises two unsworn summaries of interviews with Applicant by investigators from the Office of Personnel Management (OPM) that were conducted May 4, 2009, and January 21, 2014. Per Directive ¶ E3.1.20, these summaries are inadmissible without having been adopted by Applicant, or presentation of evidence from an authenticating witness.

⁵Item 3.

⁶Item 4.

<u>SOR ¶</u>	<u>Erroneously Alleged Information:</u>	<u>Should Read:</u>
1.a	\$18,141	\$18,614
1.b	\$3,903	\$2,877
1.d	“charged off”	“placed for collection”
1.e	\$1,334	\$840
1.f	\$1,276	\$1,160
1.h	\$1,112	\$1,174
1.j	\$348	\$280
1.m	\$54	\$514
1.r	\$327	\$40

As noted above, Applicant admitted all SOR allegations. He provided neither evidence of any basis to dispute their validity, nor of any payments to reduce or otherwise resolve any of them. He claimed in AE A that he had reduced his outstanding balance on the debt alleged in SOR ¶ 1.a to below \$13,000 but provided no evidence to support this claim. He also claimed that he had resolved some of the debts alleged in SOR ¶¶ 1.d through 1.j, without specifying any details, but said that he had no corroborating evidence because his ex-wife would not provide him with mail during their separation and divorce.⁷

Applicant provided no evidence establishing his current income or household budget. He offered no evidence of financial counseling, of savings or retirement investments, or of other indicators of financial responsibility. The record lacks any evidence concerning the quality of Applicant’s professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable

⁷Item 2; AE A.

guidelines in the context 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 the 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, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant admittedly has 18 unresolved delinquent debts, totaling more than \$43,000. These debts arose over the past several years despite his continuous employment, and he failed to show that he resolved any of them. His ongoing pattern and history of inability or unwillingness to pay lawful debts raise security concerns under DCs 19(a) and (c), and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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.

Applicant has incurred substantial delinquent debts, which continue to date. He offered no evidence of any progress in addressing them, and continues to carry a large amount of unresolved debt. He failed to demonstrate that conditions beyond his control contributed to his financial problems, or that he acted responsibly under such circumstances. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning a delinquent debt, and Applicant admitted owing the debts alleged in the SOR. Accordingly, he did not establish mitigation under any of these conditions.

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 pertinent facts and circumstances surrounding this case. Applicant is an accountable and experienced adult, who is responsible for the voluntary choices and conduct that caused the financial problems underlying the security concerns expressed in the SOR. His SOR-listed delinquent debts remain unresolved despite his reported continuous employment throughout that period. He offered insufficient evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of his life to offset resulting security concerns. The potential for pressure, coercion, and duress from his financial situation remains undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

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
Subparagraphs 1.a through 1.r: ⁸	Against Applicant

⁸With the factual corrections to the SOR allegations as noted in the table on page 3 above.

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.

DAVID M. WHITE
Administrative Judge