



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



In the matter of:)	
)	
)	ISCR Case No. 14-04398
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

04/02/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On September 30, 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 hearing before an administrative judge. The case was assigned to me on December 30, 2014. A notice of hearing was issued on January 12, 2015, scheduling the hearing for February 20, 2015. The case was cancelled and rescheduled for March 20, 2015. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified and submitted Exhibits AX A through E, which were admitted into the record. The transcript was received on March 31, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted half the SOR allegations and denied half with explanations.

Applicant is a 59-year-old economist. He received his undergraduate degree in 1979, and his doctorate in 1987. Applicant has been gainfully employed for the past 15 years, with the exception of three months in 2013, and two months in 2008. He believes he had a security clearance in about 2008. (GX 1) He is being sponsored by his employer from 2014. He is now employed with a private company.

Applicant is married and has five adult children. His wife has a medical issue that prevents her from working. (Tr. 13) Her disease has caused many medical bills. He did not have health insurance at the time. (Tr. 20)

The SOR alleges federal tax liens, judgments, collection accounts, and delinquent medical accounts in the total amount of about \$34,000 (GX 2) .

Applicant is in a payment plan for the 2010 and 2008 federal tax liens, which amount to approximately \$18,000. (SOR ¶ 1.a-b) He presented documentation that he reached an agreement with the Internal Revenue Service (IRS) IRS. Applicant pays \$150 monthly for one year and then the payment will increase to \$250 for the following years. (AX A) He began the plan in April 2014.

Applicant's reason for the federal tax liens is based on his contractual employment. He receives a 1099 form at the end of the year and if he did not estimate correctly on the amount of tax due, he might not have the money to pay the tax. (Tr. 41) he acknowledged that he did not set aside sufficient income for the tax.

As to SOR 1.c for a 2005 federal tax lien in the amount of \$55,000, Applicant denies this allegation. He states that this has been an ongoing issue with the IRS. In 1999, he was seriously ill. At the time he owned a company. In 2001 Applicant received a bill from the IRS stating that he owed tax in the amount of \$55,560. He had no idea why this would be the case. He researched the issue and discovered that a broker had sold stock from the company, unbeknownst to Applicant, and the proceeds from the sale of the stock was charged to Applicant. Applicant contacted the IRS, but he notes that he "dodged" it for years. His attitude was "catch me if you can." (Tr. 18) He notes that the lien amount is no longer listed by the IRS. (Tr. 18) He has no intention of paying the debt. Applicant also learned that the broker had scammed other people. (AX B)

Applicant has a payment plan for a state tax lien in the amount of \$100 a month. The current balance is \$1,707.89. The first payment was made in November 2014. (AX E) He notes that they take the money directly from his pay. This was not listed on the SOR. Applicant believes he owes them about \$7,000. (Tr. 23)

As to allegation SOR 1.f, Applicant submitted documentation that he does not owe any back child support. (AX D) He explained that his wife became angry with him, and wanted him to pay child support for one of their own children who lives with them. It is not clear but Applicant submitted another document from child support which shows that he has a balance of \$1,707.89, which will be deducted automatically from his account beginning in August 2015. (AX C) However, a 2014 credit bureau report shows a balance of \$7,261 for child support. (Tr. 48)

Applicant's attitude toward the credit card debts is clear. If he feels that he has been treated rudely by them, he is not inclined to pay the bill. Applicant does not like the 'astronomical' interest that they charge. Applicant will not deal with credit card companies. (Tr. 20)

As to the medical accounts, the bills are for his wife's medical treatment. He has no excuse for not paying them and he knows he has a bad attitude. At one point, he stated that he was not in a position to pay them, but he believes he could probably make some arrangements. His wife hopes that she will receive disability from Social Security and that her medical bills will be paid by them.

Applicant was candid. He does not understand why his delinquent debts should matter to the Government and prevent him from obtaining a security clearance. He admits being negligent with credit card companies. If they are not willing to work with him on his terms, they will not get paid. (Tr. 52)

Applicant has a payment plan for a debt that is not listed on the SOR. He acknowledged that he has no other payment plans for the delinquent debts alleged on the SOR. He stated that he would probably try to arrange a payment for the debt in 1.n because it would be stupid not to have that credit card. (Tr. 55)

Applicant did not admit or deny some of the credit card accounts. He does not recall the accounts. He also noted that allegation 1.m and 1.r are duplicates. He believes he has called some companies about a payment plan, but he does not know which ones. He has not formally disputed any of the debts.

Applicant earns approximately \$138,000 a year. His previous job paid about \$66 an hour. He has about \$585 in a 401(k) account. (Tr. 60) He has a negative sum in his checking account. He has no car loan. He has not sought financial counseling.

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. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ 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.

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

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 he owes delinquent debt as reported in his SOR. He also has other federal and state tax liens. His credit reports confirm 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.

Applicant would not pay some credit accounts because he thought that they were rude when dealing with him. He has had this attitude for a number of years. 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) does not apply.

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) does not apply. Applicant has decided not to pay his wife's medical bills because he believes it is not fair. He has not acted responsibly during the past several years.

(FC MC) AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant took steps toward resolving two federal tax liens. He is in a payment plan for a state tax lien. The judgments, medical accounts, and other consumer accounts are not being addressed. Applicant has the ability to pay but he wants to settle for less than the amount due. If the credit card companies do not work with him, he will not pay. (FC MC) 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) does not 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 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. Applicant is 59 years old. He is an educated man. He has worked in a variety of positions, but has not had long periods of unemployment. He admits that he when he is capable of paying debts that he does. He stated that when he feels he cannot afford to pay, he ignores them and hopes they will go away. He has not formally disputed any of the debts. He just recently started the IRS payment plans. The other debts on the SOR have not been addressed. In addition, he has other delinquent debts.

Applicant has not met his burden to overcome security concerns under the financial considerations guideline. I do not believe that he has acted responsibly. I have doubts about his current reliability and judgment. Clearance is denied.

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.b:	For Applicant
Subparagraphs 1.d-1.r:	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. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge