



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-04568
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

02/17/2016

Decision

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

Applicant submitted insufficient documentary evidence to mitigate Guideline F security concerns. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On October 2, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) 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; DOD 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 a response to the SOR, dated January 20, 2015, Applicant admitted all 10 allegations. He also requested a determination based on the written record in lieu of a hearing. On June 25, 2015, the Government issued a File of Relevant Material (FORM) that contained four attachments (“Items”). Applicant did not respond within the 30 days provided. The case was assigned to me on December 1, 2015. Based on my review of the case file and submissions, I find Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 65-year-old painter who worked for the same defense contractor from 1990 until November 2014, when he left work under the Family Medical Leave Act (FMLA) to care for his ailing wife. He has three children. Applicant served honorably in the United States Air Force from 1969 through 1988. He has maintained a security clearance without incident since 1969. At issue are 10 allegations (1.a-1.j), each representing a delinquent debt. Those debts range from \$378 to \$23,300, and amount to approximately \$52,500. Applicant admits he owes all of the debts at issue.

In 2005, Applicant's wife was the victim of a "botched" surgery which required follow up procedures to address her condition. She began suffering from dementia, was placed in a nursing facility, and passed away in January 2015. In the interim, his financial situation worsened in the 2008-2009 timeframe when the economy dipped and Applicant's credit cards saw drastic interest rate increases. As a result, he acquired delinquent debt. When he completed his 2014 security clearance application (SCA), however, he noted no adverse financial issues under Section 26 (Financial Record).

Applicant provided no documentary evidence showing that he has made any attempt to work with any of his creditors, dispute any of the accounts at issue, or make any progress toward addressing either his finances or related security concerns. The record upon which he requested an administrative determination be made is very lean. It consists of the Government's brief, the SOR, Applicant's response to the SOR, notes from a subject interview, and a 2014 credit report.

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, 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 not drawn 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 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. 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) (listing multiple prerequisites for access to classified or sensitive information).

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, the Government introduced credible evidence showing Applicant has multiple delinquent debts amounting to over \$52,500. This is sufficient to invoke two of the 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.

With regard to the debts at issue and their present status, the debts are multiple in number and remain unaddressed. There is no documentary evidence Applicant has received financial counseling. No evidence was introduced indicating Applicant's current financial situation. Applicant admitted all of the debts at issue, and did not indicate he disputes any of those debts. Overall, there is no evidence of progress on these account balances noted in the SOR.

With regard to the origin of the delinquent debts, Applicant asserts that his leave from work, his wife's medical issues, and a downturn in the economy contributed to his financial distress. This assertion is both logical and credible. Clearly, his finances were adversely impacted by circumstances beyond his control, potentially raising AG ¶ 20(b). That mitigating condition, however, also requires a showing that the individual acted responsibly under the circumstances. The scant information provided sheds little light on what, if any, efforts Applicant exerted at the time to work with his creditors, address the debts at issue, or dispute their accuracy. Lacking evidence of such responsible behavior, AG ¶ 20(b) cannot apply. In light of the above, none of the financial considerations 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 adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on 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. 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 that guideline, but some warrant additional comment.

Applicant joined the United States Air Force shortly after high school. There, he received a security clearance he would maintain without adverse incident until the present. He remained in the military until he retired in 1988, after nearly two decades of honorable service. He started working for his present employer, a defense contractor, in 1990. In 2005, his wife received inappropriate medical care. This caused her health to slowly deteriorate, requiring ever-increasing degrees of medical care and attention, including personal care provided by Applicant while on FMLA from work. In the interim, the economy suffered and Applicant's credit cards notably increased their interest rates. Applicant's wife recently passed away. Little is known of Applicant or his finances since that time. He does, however, attribute the 10 delinquent debts at issue to these facts. Those 10 delinquent debts amount to about \$52,500.

The scant facts of record are compelling and sympathetic. Applicant has responsibly maintained a security clearance both in and out of uniform for over three-and-a-half decades. Applicant did his best to assist with his wife's health care. The security concerns raised by the creation of his delinquent debts potentially could be mitigated. He failed, however, to offer any documentary evidence showing any efforts to work with his creditors at any point in the past decade. He also failed to provide any indication as to his present financial situation or plans for addressing this debt. With no documentary evidence tending to mitigate the security concerns raised, and no indication as to how he plans to address his debt, those concerns remain unmitigated.

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.j:	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