



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



In the matter of:)	
)	
)	ISCR Case No. 14-05254
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel

For Applicant: *Pro se*

10/30/2015

Decision

CURRY, Marc E., Administrative Judge:

Over the years, Applicant incurred ten delinquent debts totalling more than \$30,000. He did not provide proof of any efforts to satisfy them, and he intentionally failed to disclose them, as required, on his security clearance application. Clearance is denied.

Statement of the Case

On December 12, 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, and Guideline E, personal conduct. 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) implemented by the DOD on September 1, 2006.

On February 24, 2015, Applicant answered the SOR, admitting all of the allegations except subparagraph 1.k. He requested a decision on the record rather than a hearing. On April 17, 2015, Department Counsel prepared a File of Relevant Material (FORM) consisting of documents supporting the Government's allegations. Applicant received the file on May 20, 2015, and was informed that he had until June 19, 2015 to submit a response. Applicant did not submit a response, and the case was subsequently assigned to me on July 30, 2015.

Findings of Fact

Applicant is a 38-year-old married man. He earned a GED in 1998, then joined the U.S. Navy in 1999, where he served until 2008. He was discharged honorably.(Item 2 at 14)

After leaving the military, Applicant had difficulty finding employment, and was unemployed for five months. (Item 1 at 6) In March 2009, he found employment as an aircraft mechanic. He worked for this employer before leaving to work for his current employer, a defense contractor, in November 2010. (Item 2 at 10-11)

Since 2009 Applicant has approximately \$36,000 of delinquent debt. (Item 1 at 3) His financial problems stemmed from his five-month period of unemployment after leaving the military. (Item 1 at 6)

The SOR does not identify the creditor listed in subparagraph 1.k. Applicant denies it. The remaining debts range from \$7 to \$16,182. Applicant provided no evidence of efforts to begin satisfying these creditors.

Applicant did not disclose any of his delinquent debts on his security clearance application, as required, in response to Section 26. (Item 2 at 27-28) In response to the allegation that his omission was intentional, as listed in subparagraph 2.a, Applicant responded that he "had just recently pulled [his] credit report." (Item 1 at 6)

Policies

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 together with the factors listed in the adjudicative process. 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

- (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.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Since 2009, Applicant has incurred approximately \$36,000 of delinquent debt. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions are potentially 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;

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The SOR does not identify the creditor to whom Applicant allegedly owes \$5,387, as listed in subparagraph 1.k. In light of Applicant's denial, I resolve this subparagraph in his favor.

Applicant's financial problems stemmed, in part, from difficulty finding employment after leaving the U.S. Navy. However, he provided no evidence of any actions taken to organize his finances, satisfy them, or arrange payment plans. Under these circumstances, none of the mitigating conditions apply. Applicant has failed to mitigate the financial considerations security concerns.

Personal Conduct

The security concern under this guideline is as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG ¶ 15)

Applicant admits intentionally omitting derogatory financial information from his security clearance application. His explanation failed to mitigate the security concern that the falsification generated under AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities."

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
Subparagraph 1.k:	For Applicant
PARAGRAPH 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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.

MARC E. CURRY
Administrative Judge