



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



In the matter of:)
)
) ISCR Case No. 15-00056
)
Applicant for Security Clearance)

Appearances

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

06/06/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On August 5, 2015, the Department of Defense (DOD) issued to 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on August 26, 2015, and elected to have his case decided on the written record. On November 19, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on November 30, 2015. Applicant was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence and did not offer any additional information. The Government's documents, identified as Items 3 through 6, are admitted into evidence. The case was assigned to me on March 31, 2016.

Findings of Fact

Applicant admitted all of the allegations in the SOR, except ¶ 1.f. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 32 years old, has never been married, and has one minor child. He served in the military from February 2004 to April 2010 when he was honorably discharged. He was unemployed for approximately a year after his discharge. From March 2011 to November 2013, he was employed part-time with a federal contractor. From November 2013 to the present he has been employed part-time with a different federal contractor. It is unknown if Applicant is currently employed full time.¹

Credit reports from November 2014 and May 2014 substantiate the debts alleged in the SOR that total more than \$14,000. The debt alleged in SOR ¶ 1.e (\$563) was paid. Applicant denied the delinquent debt in SOR ¶ 1.f (\$177) without explanation or documented proof. Applicant's largest delinquent debt (SOR 1.a, \$10,607) relates to a repossessed vehicle. He noted in his answer to the SOR that he was "making plan to pay off all debt." During his June 2014 background interview he was provided with a list of his delinquent debts, and he indicated he intended to research and resolve them. Applicant did not provide evidence of his actions to pay, resolve, or dispute the delinquent debts alleged in the SOR.²

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 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,

¹ Item 3.

² Items 4, 5, 6.

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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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. 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 that an applicant may deliberately or inadvertently fail to 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding classified information.³

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has seven delinquent debts that total more than \$14,000. He began accruing the majority of them in approximately 2010. His delinquent debts are unpaid and unresolved. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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.

³ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

Applicant paid one debt, but failed to provide evidence that any of the remaining debts in the SOR have been paid or resolved, despite being put on notice in 2014 during his background interview. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to timely address his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply

Applicant's financial problems were likely due to unemployment after his discharge from the military and subsequent part-time employment. These are conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He did not provide evidence of his actions to pay, resolve, or dispute the delinquent debts alleged. AG ¶ 20(b) partially applies.

Applicant did not provide evidence that he received financial counseling. There is insufficient evidence to conclude he made good-faith payments to six creditors or otherwise resolved those delinquent debts. Despite paying one delinquent debt there are not clear indications that Applicant's financial problems are being resolved or under control. AG ¶ 20(d) applies to SOR ¶ 1.e. AG ¶¶ 20(c) and 20(d) do not apply to the remaining debts.

Applicant disputed the debt in SOR ¶ 1.f. He did not provide a reasonable basis to dispute the legitimacy of the debt or documented proof to substantiate the basis of the dispute or any actions he may have taken to resolve the issue. AG ¶ 20(e) 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 the 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 32 years old. He served in the military and received an honorable discharge. He subsequently experienced a period of unemployment and part-time employment. Applicant had an opportunity to provide substantiating documentation of actions he may have taken to resolve his delinquent debts, but did not provide it. He has failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.h:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge