



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 15-00825
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

May 25, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant remains indebted to eight creditors in the total approximate amount of \$49,309. 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 on September 7, 2012. (Item 2.): On September 18, 2015, 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). 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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR, dated October 9, 2015 (Item 1), and requested that his case be decided by an administrative judge on the written record without a hearing. Department Counsel submitted the Government's written case on November 30, 2015, containing six Items. A complete copy of the File of Relevant Material (FORM) was received by Applicant on December 8, 2015, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on December 8, 2015. He failed to submit additional material in response to the FORM by the due date of January 7, 2016. I received the case assignment on February 26, 2016.

Findings of Fact

Applicant is 46 years old, and has worked for a defense contractor since September 2012. He reported unemployment from February 2009 to August 2012 and May 2007 to February 2008 on his security clearance application. He has never married and has no children. (Item 2.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR alleged that Applicant is delinquent on eight debts in the total approximate amount of \$49,309. In Item 1, Applicant admitted the delinquent debts as set forth in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, and 1.g. He denied the delinquent debts as set forth in SOR ¶¶ 1.e and 1.f because he was unaware of those accounts; and 1.h because he believed his taxes were paid. Applicant's delinquent accounts appeared on his credit reports dated September 19, 2012; January 16, 2015; and August 14, 2015. (GE 4; GE 5; GE6.)

Applicant attributed his financial difficulties on the economic downturn and his unemployment. He wrote:

Prior to the housing market/bad economy all my bills were paid on time. Since the market crash, I was laid-off. As the months turned into years, It was harder to find a job because the gap between jobs was getting bigger, and nobody was hiring. Since I started working, I have been current with my bills. Unfortunately, I am unable to pay each of the listed [accounts], due to [a] medical issue. I had a cancer tumor removed from my nose/back brain. I've been paying medical bills. It's been 2 ½ years and I am still seeing [doctors]. That[']s why I am going through a credit company. Everything will be paid off in 2 ½ years. (Item 1.)

Applicant is indebted on a loan that has been placed for collections in the amount of \$4,920, as stated in SOR ¶ 1.a. This debt has been delinquent since 2011. (Item 6.) It remains unresolved.

Applicant is indebted on a vehicle loan that has been placed for collections in the amount of \$12,153, as stated in SOR ¶ 1.b. This debt has been delinquent since 2009. (Item 6.) It remains unresolved.

Applicant is indebted on a credit union loan that has been placed for collections in the amount of \$8,340, as stated in SOR ¶ 1.c. This debt has been delinquent since 2009. (Item 5.) It remains unresolved.

Applicant is indebted on a collection account in the amount of \$6,687, as stated in SOR ¶ 1.d. This debt has been delinquent since 2009. (Item 5.) It remains unresolved.

Applicant is indebted on a charged-off account in the amount of \$1,408, as stated in SOR ¶ 1.e. This debt has been delinquent since 2009. (Item 5.) It remains unresolved.

Applicant is indebted on a collection account in the amount of \$403, as stated in SOR ¶ 1.f. This debt has been delinquent since 2009. (Item 5.) It remains unresolved.

Applicant is indebted on a collection account in the amount of \$7,898, as stated in SOR ¶ 1.g. This debt has been delinquent since 2012. (Item 6.) It remains unresolved.

Applicant is indebted on a Federal tax obligation owed to the U.S. Government for tax year 2009 in the amount of \$7,500, as stated in SOR ¶ 1.h. He disclosed this debt on his security clearance application. (GE 2.) Applicant claimed to have resolved this debt in his Answer, however, he failed to present documentation to support his claim. (Item 1.) It is unresolved.

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 has a long history of delinquent debt. Many of his accounts have been delinquent since 2009, and continue to remain delinquent despite his employment since September 2012. His ongoing pattern of delinquent debt, and history of inability or unwillingness to pay his lawful debts, raises security concerns under DCs 19(a) and (c), and shifts 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 failed to produce sufficient evidence that he has addressed any of his delinquencies. He offered little evidence from which to establish a track record of debt resolution. He demonstrated that conditions beyond his control such as unemployment and medical problems contributed to his financial problems but failed to show that he acted responsibly under such circumstances by addressing his delinquencies in any manner. He did not produce evidence that he received financial counseling. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning an alleged debt, and Applicant failed to provide any such evidence. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions.

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 adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His SOR-listed delinquent debts arose over the past eight years and appear to remain unresolved. He did not show that he resolved even the smallest of his debts, totaling only \$403. 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

