



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



In the matter of:)	
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)	ISCR Case No. 14-05015
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

September 3, 2015

Decision

MOGUL, Martin H., Administrative Judge:

On February 10, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. (Item 1.) 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) effective within the Department of Defense after September 1, 2006.

On March 21, 2015, Applicant replied to the SOR (RSOR) in writing, and he requested that his case be decided on the written record in lieu of a hearing. (Item 2.) On May 14, 2015, Department Counsel issued the Department's written case. On June 12, 2015, a complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered six documentary exhibits. (Items 1-6.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on July 22, 2015. Applicant submitted a two page letter, identified and entered into evidence without objection as Item A. The case was assigned to this Administrative Judge on July 21, 2015. Based

upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 65 years old. He served in the United States Army and was a police officer for 20 years before retiring. He is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists four allegations (1.a. through 1.d.) regarding financial difficulties, specifically overdue debts totaling approximately \$30,000, under Adjudicative Guideline F. The debts will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for a collection account in the amount of \$14,343. In his RSOR, Applicant admitted this SOR allegation. He wrote that this was a business account for the purchase of carpeting for his business. His explanation is that he was charged a finance charge, which was contrary to his understanding that there would be no finance charge. Ultimately, despite Applicant's attempt to resolve this dispute, it was never settled, and it has been sold to collection agency. (Item 2.)

Applicant submitted a letter that he wrote to the creditor of this account on March 8, 2010, disputing this debt. While I find that Applicant does have a good-faith reason to believe that he does not owe the entire amount demanded by the creditor, by his own estimation he did owe at least \$5,690. The credit reports also show that Applicant owes a significant amount to this creditor, and there is no indication that Applicant disputed this debt with the credit reporting agencies. (Items 5 and 6.) I find that this debt is still outstanding.

1.b. This overdue debt is cited in the SOR for a collection account in the amount of \$7,032. In his RSOR, Applicant admitted this SOR allegation, writing that this debt is from a personal credit card account, and he is currently working on paying this debt off. (Item 2.) In Item A, Applicant's Post-FORM letter, he wrote that this debt remains unpaid, despite his previous contention in the RSOR that he is working to pay this debt off. I find that this debt is still outstanding.

1.c. This overdue debt is cited in the SOR for a charged-off account in the amount of \$6,275. In his RSOR, Applicant denied this SOR allegation, contending that he does not owe this debt because the creditor sent him a 2014 Form 1099-C, "Cancellation of Debt," which Applicant included with the RSOR. The 1099-C showed that the creditor discharged the debt in the amount of \$5,575.59. (Item 2.) Item 6 shows

that this debt, was closed at the consumer's request and is charged off, with the amount owed \$1,123. (Item 6.) No evidence was introduced to show what action, if any, Applicant did to have this debt discharged, and if Applicant included the amount discharged in his 2014 tax return.

1.d. This overdue debt is cited in the SOR for a collection account in the amount of \$3,103. In his RSOR, Applicant admitted this SOR allegation, writing that this debt is from a personal credit card account, and he is currently working on paying this debt off. (Item 2.) In Item A, Applicant wrote that this debt remains unpaid, again despite his previous contention in the RSOR that he is working to pay this debt off. I find that this debt is still outstanding.

Applicant wrote in his RSOR that his overdue debts began in 2007 when he put his home up for sale with the intention of buying a new home. Shortly after he signed a contract to construct his new home, the housing market crashed and he was in a position of holding two mortgages. During the same period, the thrift store in which he worked, and that he had founded in 2005, was also hurt by the falling economy, and he was forced to take a reduced salary. Ultimately the store closed in December 2012. Applicant and his wife used their credit cards to pay for their mortgages and their living expenses, hoping that the economy would improve. By mid 2009, they were unable to make their payments and their credit cards became delinquent. (Item 2.)

Applicant wrote that prior to his accounts becoming overdue in 2009, he was current with all of his bills and had an excellent credit rating. Finally, he averred that he has not incurred any new delinquencies since 2009, and he has rented out one of his homes and he remained current on both of his mortgages with no late or missed payment on either. (Item 2.)

The Government has established all of Applicant's debts through Applicant's RSOR, and the credit reports. (Items 5 and 6.) No evidence was introduced to establish that since the SOR was issued on February 10, 2015, Applicant has contacted any of the creditors, made any payment plans, or resolved or reduced any of these overdue debts.

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 useful 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.

A person who applies 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.

Section 7 of Executive Order 10865 provides that adverse 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.

The guideline notes several conditions that could raise security concerns and could potentially apply in this case. Under AG ¶ 19(a), “an inability or unwillingness to satisfy debts,” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt, much of it several years old, which has not been satisfied.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. Under AG ¶ 20(b), it may be mitigating where, “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.” As reviewed above, Applicant explained his financial difficulties occurred, in part, because of the poor economy which hurt Applicant’s business and forced him to have two mortgages. However, despite Applicant’s expressed intention to resolve his significant overdue debts, and the fact that the debt listed on the SOR as 1.c. may be resolved, no evidence was introduced to establish that Applicant has been responsible in taking any steps to resolve, or even reduce, any of the four overdue SOR debts. Therefore, I find that this mitigating condition is not a factor for consideration in this case.

Since there is no evidence that Applicant has initiated a good-faith effort to repay overdue creditors, I do not find that AG ¶ 20(d) is applicable. Finally, I do not find any other mitigating condition applies to this case. Therefore, I find Guideline F against Applicant.

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.

