



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 14-05124

Appearances

For Government: Gregg I. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

08/24/2015

Decision

HOWE, Philip S., Administrative Judge:

On September 26, 2012, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). On December 9, 2014, the Department of Defense 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; Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); 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 on September 1, 2006.

Applicant answered the SOR in writing on January 20, 2015 (Answer). Applicant admitted the one allegation. Applicant requested his case be decided on the written record in lieu of a hearing.

On May 19, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 through 6, was provided to the Applicant on June 1, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on June 15, 2015. Applicant filed a Response to the FORM (Response) within the 30-day time period allowed that would have expired on July 15, 2015. The Response is dated July 21, 2015 and I admitted it to the record after the Department Counsel had no objection. I received the case assignment on July 30, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted the allegation in Subparagraph 1.a. (Item 2)

Applicant is 59 years old, married to his second wife, and has no children. He works for a defense contractor. Applicant is a licensed civil engineer. (Item 3; Response)

Applicant owes a credit card issuer \$32,894 that remains unpaid (Subparagraph 1.a). He incurred this debt, he claims, when he renovated his home. He submitted an \$80 month installment payment agreement dated January 2015 with his Response, but states he is not paying that installment agreement because the account was sold to other creditors by the original lender. Applicant is now waiting for the latest creditor to offer him a payment agreement. The debt became delinquent in September 2011. (Items 3-6; Answer; Response)

Applicant stated in his Response that he and his wife were laid off from work from May 2010 to April 2011. Applicant did not submit any documentation to show that the unemployment four years ago now affects his current ability to resolve this debt. He now earns \$175,000 annually, and other than his \$700,000 mortgage this credit card debt is his only debt (Items 3-6; Answer; Response)

The credit reports in the record show Applicant disputed the credit card debt and then disagreed with the resolution of the dispute. Applicant's e-QIP lists this account and states that he resolved the dispute with the credit issuer and was making payments

on the account. His Response now contradicts that statement because of the resale of the account. The debt remains unresolved. (Items 3-6; Answer; Response)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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. 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations.

From 2011 to the present, Applicant accumulated one significant delinquent debt, totaling \$32,894 that remains unpaid and unresolved. In the past four years, Applicant has been employed and currently earns a significant salary. He could have resolved this debt in the time since he completed his e-QIP. These two disqualifying conditions are established.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. None of them are established by 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 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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken any action to resolve this large delinquent debt. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debt. Additionally, he exhibited a continued lack of appropriate judgment by failing to make payments on this delinquent debt during the past four years.

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the whole-person concept against Applicant.

