



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



In the matter of:)
)
) ISCR Case No. 14-05292
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

08/19/2015

Decision

HENRY, Mary E., Administrative Judge:

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

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on March 18, 2014. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on November 8, 2014, 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 for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR, and he submitted a notarized, written response to the SOR allegations dated December 1, 2014. He requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on June 8, 2015. Applicant received the FORM on June 15, 2015. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on August 3, 2015. The Government submitted five exhibits, which have been marked as Items 1-5 and admitted into the record.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations of the SOR. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 40 years old, works as a rigger for a DOD contractor. He began his current employment in April 2014. He previously worked as a driver for several companies between 2004 and 2014 with one exception. From January 2008 until August 2009, Applicant operated his own transit business. He ceased operations because the company was bankrupt. Applicant served on active duty in the United States Army from July 1993 until January 1998, when he received an honorable discharge. He served in the Army National Guard from December 1999 until December 2008, when he received an honorable discharge.¹

Applicant graduated from high school in 1993. He and his wife married in May 2005. They have an eight-year-old daughter. Applicant and his first wife married in June 1995 and divorced in April 1997. They have a 19-year-old daughter. He also has a 25-year-old stepson and a 20-year-old stepdaughter.²

Applicant's current income and monthly expenses are unknown, as he did not provide a budget and copies of his earnings statements. The record lacks any evidence that he has received financial counseling.

The SOR identified 12 purportedly continuing delinquencies totaling approximately \$53,186 as reflected by credit reports from 2014 and 2015. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in both credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agency name or under a different creditor or collection agency name. Some accounts are identified by complete account numbers, while others are identified by partial

¹Item 2; Item 3.

²Item 2; Item 3.

account numbers, in some instances eliminating the last four digits and in others eliminating other digits.

Applicant advised that his unpaid debts are the result of his failed business. He started his business in January 2008 just as the economic decline began. Because the economy seriously declined, he was unable to develop his business, and it failed. He told the investigator from the Office of Personnel Management during his April 2014 personal subject interview that he intended to pay his debts in the future. He also indicated that a tax lien had been filed against him; however, he paid the debt, and the lien has been released. The record does not have any evidence to support this statement.³

The credit reports of record reflect that the debts in SOR ¶ 1.f (\$1,134) and ¶ 1.g (\$1,133) are the same, as the account numbers are the same. Likewise, the debts in SOR ¶ 1.h (\$982) and ¶ 1.i (\$678) are the same because the account numbers are the same. The creditors identified in ¶ 1.f and ¶ 1.h are collection agencies, not original creditors. SOR allegations ¶1.g and ¶ 1.i are found in favor of Applicant.⁴

Applicant acknowledged the SOR debts. He has not provided any documentation showing that he paid any of the remaining SOR debts. He has not provided any documentary evidence that he contacted the creditors to negotiate a settlement or a payment plan for the remaining debts totaling more than \$51,000.⁵

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

³Item 3.

⁴Item 4.

⁵Item 1.

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.

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. . . .” An applicant has the ultimate burden of persuasion for 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 an 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 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

(c) a history of not meeting financial obligations.

Applicant developed significant financial problems when his business failed in 2009. Most of the debts have not been resolved. These two disqualifying conditions apply.

The financial considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following 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; and

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

Applicant's debts stem from his failed transportation business. He started his business in early 2008, just as the economy began to decline. The economic slowdown had a direct impact on his business, which is a factor beyond his control. AG ¶ 20(b) is only partially applicable because Applicant has not shown that he acted reasonably under the circumstances to resolve his debts.

Two SOR debts are resolved because these debts are duplicate listings in the SOR and the 2014 credit report. AG ¶ 20(c) applies only to SOR allegations 1.g and 1.i.

The record lacks any evidence that Applicant paid, is paying, or developed a payment plan for the remaining SOR debts. The remaining mitigating conditions are not applicable in this case.

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.⁶

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant served in the Army and the Army Reserve for almost 15 years and received an honorable discharge. He tried to establish a transportation business, but the business failed when the economy declined. He incurred significant debt while operating his business.

⁶In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has "... established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant did not provide documentation showing his income and expenses, and he did not provide a budget. He presented insufficient evidence about what he has done since becoming employed with his current employer to pay his SOR debts or his other debts. He did not provide any of the following documentation relating to the SOR creditors: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditor; (2) correspondence to or from any creditors to establish maintenance of contact with creditors;⁷ (3) a credible debt dispute indicating he did not believe he was responsible for the debt and why he held such a belief; (4) attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these SOR debts; (5) evidence of financial counseling; or (6) other evidence of progress or resolution of his SOR debts.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F.2d at 1401. Unmitigated financial considerations concerns lead me to conclude that the grant of a security clearance to Applicant is not justified at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. Based on the facts before me and the adjudicative guidelines that I am required to apply, I conclude that it is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.l:	Against Applicant

⁷Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside of [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. BD. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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 a security clearance is denied.

MARY E. HENRY
Administrative Judge