



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



In the matter of:)	
)	
)	ISCR Case No. 14-06633
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Meg Foreman, Esq., Department Counsel
For Applicant: *Pro se*

11/21/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On January 20, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on July 1, 2015. A notice of hearing was issued on August 4, 2015, scheduling the hearing for September 18, 2015. At Applicant's request, the case was postponed for good cause.¹ The hearing was rescheduled for October 23, 2015. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified, presented the testimony of one witness,

¹Applicant wanted to seek legal counsel. (See *Tr. 1*)

and submitted Applicant Exhibits (AX) A-D, which were admitted without objection. I held the record open for additional submissions until November 6, 2015. Applicant timely submitted one document, which was admitted as AX E, without objection. The transcript was received on November 2, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations under Guideline F, with the exception of 1.c.² He provided explanations for each alleged debt.

Applicant is 39 years old. He graduated from high school and attended college from 1994 to 2000, but did not obtain a degree. He obtained a certificate in computer education in 2008. Applicant is married and has two children. He has been with his current employer since 2013 where he serves as an Information Technology (IT) manager. He completed a security clearance application in 2013. (GX 1) Applicant has been cleared for a position of trust. (Tr. 25)

The SOR alleges approximately \$36,000 in delinquent debt, which includes student loans, a 2010 judgment, and two charged-off accounts. (GX 2 and 3)

Applicant was candid at the hearing stating that his past payment history has been inconsistent, but that the economy and the federal contracting markets have also fluctuated. He realizes that he has made mistakes and accepts responsibility for his student loans. He understands the gravity of the situation and does not intend to make the same errors. Applicant was unemployed from March 2012 to July 2013. He received unemployment benefits and his wife supported him financially during this time. He paid some non-SOR debts and made payments on the student loans when he was gainfully employed. (Tr. 38) He has consistently made payments on another student loan in the amount of \$9,000. He paid a private student loan in full. (Tr. 53) He also noted that his tax refunds were intercepted in 2012. (Tr. 39) Applicant's latest credit report shows that at least four other accounts were "pays as agreed." (GX 3)

As to SOR allegation 1.a, Applicant explained that he is currently in the process of qualifying for a loan rehabilitation program. He has not yet received the paperwork. He contacted the Department of Education and they have not yet told him what the monthly amount will be on the total loan amount of \$22,538. (Tr. 55)

Applicant initially disputed the debt in allegation 1.b for \$588. This collection account is for his wife's phone account. When he contacted the phone company, they had no record of the debt. He found the company that bought the debt and the account is paid in full. (AX A)

²At the hearing, Department Counsel withdrew SOR 1.c and 1.f as they were duplicative of other accounts.

As to the debt in 1.c for \$28,300 for a student loan in collection, the Government acknowledged that this is duplicative of the allegation in 1.a.

As to the debt in 1.d for a 2010 judgment in the amount of \$1,229, Applicant states that this is the same debt (judgment for \$1,169) as noted in 1.f. The Government as noted above, withdrew the allegation in 1.f. The account was sold to a private collection company. He has made arrangements to repay the debt in installment payments. (AX B) The monthly amount is \$100. The outstanding balance is \$1,736.81. (Tr. 43)

As to the debt in 1.e for a student loan in the amount of \$12,557, Applicant is in the process of obtaining a loan rehabilitation payment program. He has not received the documentation as of this date.

Applicant's net monthly pay is about \$2,600. He works part time and earns about \$400 a month. His wife works as a senior program manager. She earns about \$4,000 a month in net income. (Tr. 50) Applicant is current on his daily expenses, mortgage, and car payment. He has not incurred any new debt.

Applicant's employer testified that he has known him for a little more than two years. As the owner of the company, he describes Applicant as very professional, prompt, and courteous. The employer does not question Applicant's judgment. He observes Applicant each day. His employer understands the financial issues with Applicant's student loans. (Tr. 18-21) Applicant's employer also submitted a favorable letter of reference. (AX C)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted that he incurred delinquent debt for three student loans, one judgment, and one cell phone account. His credit reports confirm the debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant still has unresolved student loan debts. He also paid several debts after his hearing was postponed in September 2015. He has been on notice since the 2012 interview with the security investigator. He recently started a payment plan with one debt. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) does not apply.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially applies. Applicant was unemployed for about 13 months. However, he has been steadily employed since 2013. He has paid some non-SOR debts and has not incurred new debt. He recognizes his mistakes. He is in the process of obtaining a loan rehabilitation plan.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant as noted above recently took steps to pay some debts and arrange payments with one creditor. He is in the process of obtaining a loan rehabilitation program for the two student loans. He had no documentation to submit to support his claim. FC MC AG ¶ 20(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) 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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 39 years old. He has been with his current employer since 2013. He is married and has two children. He has held a position of trust. He is recommended by his employer. He sought to better his employment opportunities by attending college for a number of years. He has paid some non-SOR debts and recently paid a debt on the SOR. He also made a payment arrangement for another SOR debt.

Applicant did not provide information concerning his current status with the student loan rehabilitation program. He initiated this plan within the past year. However, the other debt that he paid was after issuance of the SOR. He knew of the Government's concern about his finances since the 2013 investigative interview. He has made payment arrangements with one account. He is beginning to address his debts, but he has not shown a meaningful track record to mitigate the security concerns under the financial considerations guideline.

Applicant did not persuade me that he refuted or mitigated the Government's case concerning the financial considerations security concerns. Any doubts must be resolved in the Government's favor.

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 :	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	WITHDRAWN
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	WITHDRAWN

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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge