



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00039

Appearances

For Government: Carroll Connelley, Esquire, Department Counsel
For Applicant: Patrick E. Henderson, Esquire

02/03/2016

Decision

HOWE, Philip S., Administrative Judge:

On August 14, 2014, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). On August 1, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 on September 1, 2006.

Applicant answered the SOR in writing on August 23, 2015. Applicant requested his case be decided on the written record in lieu of a hearing.

On September 25, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of

Items 1 to 5, was provided to the Applicant on September 29, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on October 8, 2015.

Applicant filed a Response to the FORM within the 30-day time allowed that would have expired on November 7, 2015.

Department Counsel submitted five items in support of the SOR allegations. Item 3 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on May 14, 2013. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

I received the case assignment on November 17, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant denied the allegation in Subparagraph 1.a and admitted all other allegations. (Items 1, 2)

Applicant is 44 years old. He is married with two adult children. He obtained a high school degree in 1989. Then he served in the U.S. Air Force from 1989 to 1992 receiving an Under Other Than Honorable Discharge. He was in the Army National Guard from 1996 to 2010 when he received an Honorable Discharge. He works for a defense contractor. (Item 2)

Applicant owes five financial delinquencies. The first two listed in the SOR are student loan debts that are unpaid and total \$88,055. The third allegation pertains to a mortgage being past due in the amount of \$2,662 on a mortgage balance of \$97,038. The fourth debt for \$35 owed to a collector for a telephone company. The fifth and final debt is owed to the same collector for a cable television debt in the amount of \$295. The earliest date of delinquency on the credit reports is August 2013. Others occurred in 2014 and 2015. (Items 1, 4, 5)

Applicant's Response states the two education loans are really only one loan taken out for his wife's education. The credit reports of August 8, 2014, and July 8, 2015, shows two separate education loans with different initiation dates and account numbers. He stated his wife obtained an Associate's degree in 2009 but could not find a job in her field of education. While she was unemployed they could not pay all their debts. In April 2015, she did find employment and is earning money. He claims they can now pay their debts. Then Applicant states his employer eliminated his job when it lost the contract at the worksite and his last day of employment there was September 11,

2015. There is no information in the FORM about Applicant obtaining unemployment compensation after he was laid off by his employer. Now he has other employment and moved to another state. (Response; Items 4 and 5)

Applicant obtained credit counseling in July 2015 from a company approved by the government for persons who want to file bankruptcy. He attached a copy of the certificate of debtor education from that counseling. Applicant and his wife consulted with an attorney about filing bankruptcy. On August 31, 2015, they filed Chapter 7 bankruptcy. Applicant stated he expected to be granted a bankruptcy discharge sometime after December 7, 2015. His bankruptcy petition shows assets of \$132,724.10 and debts of \$176,023.92. Applicant listed the same debts as are listed in the SOR except only one of the education loans for \$47,040. (Response)

Applicant 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 2013 to the present, Applicant accumulated six delinquent debts, totaling \$91,047, that remain unpaid or unresolved. Applicant did not explain why he could not have paid a \$35 and \$295 debt as listed in the SOR. Nor did he explain why he allowed his mortgage to become delinquent. He blames his wife’s inability to find employment for six years after her college graduation, but nothing more. He has shown an inability and unwillingness to pay his debts in a responsible manner. AG ¶ 19 (a) is established.

Applicant also has a history of not paying these debts in a timely fashion. AG ¶ 19 (c) is established.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only one mitigating condition might have partial applicability.

(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.

AG ¶ 20 (b) would apply if Applicant's wife's lack of employment were shown by Applicant to have a substantial effect on his ability to repay his debts. He offered nothing more than the conclusionary statement that it was her lack of an income that caused the financial inability to pay his debts. Applicant did not submit any documents showing his income during the last six years and why from that income he could not pay these debts. Nor did he show why since April 2015 when his wife started working that he did not catch up on his debt payments. He failed to meet his burden of proof on that issue.

Applicant contends his Chapter 7 bankruptcy filing, which required financial counseling, shows that he is trying to resolve his problems.. There is no discharge in bankruptcy offered to show that the court granted that status. Education debts are generally not dischargeable in bankruptcy. AG ¶ 20 (c) does not apply because his debt is not resolved or under control. No other mitigating conditions 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 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 did not take any action in the past three years to pay small debts or take action to resolve his larger delinquent debts. His inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligations. After the SOR was sent to him he started a Chapter 7 bankruptcy action in late 2015. He did not take any action before then to resolve these debts. Applicant displayed a lack of good judgment by incurring the delinquencies. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past three years.

Overall, the record evidence leaves me with questions or 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.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a to 1.e:	Against Applicant

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 access to classified information is denied.

PHILIP S. HOWE
Administrative Judge