



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



In the matter of:)
)
) ISCR Case No. 15-05087
)
)
Applicant for Security Clearance)

Appearances

For Government: Carroll Connelley, Esq., Department Counsel
For Applicant: *Pro se*

12/10/2015

Decision

WHITE, David M., Administrative Judge:

Applicant incurred 49 delinquent debts over the past decade, totaling more than \$38,000. He demonstrated neither sufficient means nor efforts toward resolving any of them. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on August 31, 2012.¹ On July 14, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February

¹Item 2.

²Item 1.

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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on August 11, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on September 10, 2015. A complete copy of the File of Relevant Material (FORM)⁴ was received by Applicant on September 26, 2015, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted no additional material in response to the FORM. I received the case assignment on November 9, 2015.

Findings of Fact

Applicant is 57 years old. He started work as a heavy equipment mechanic for a defense contractor in 2012, after more than a decade working for various companies and periods of self employment as an automotive technician. He received a GED in 1999. He has been married for 37 years and has five adult children. He has no military service, and has never held a security clearance.⁵

In his response to the SOR, Applicant admitted the truth of the 49 allegations concerning delinquent debts. They range from a \$55 medical debt placed for collection in February 2011, described in SOR ¶ 1.r, to the \$8,437 balance due after the early 2012 repossession of a vehicle that he borrowed \$18,287 to purchase in July 2011, as described in SOR ¶ 1.b. He documented his undated offer to settle a law suit over this largest debt for a series of \$350 monthly payments totaling \$2,862, but failed to show that his offer was accepted or that he made any payments thereunder. All SOR-alleged debts are supported by the record credit reports. Twenty-four of these debts are for less than \$200, and another 13 of them are for less than \$400. Appellant neither asserted nor documented any payments, disputes, or other resolution of any of these debts except to say that he had been making payments toward the repossessed vehicle loan.⁶

Applicant provided no evidence establishing his current income or household budget. He offered no evidence of financial counseling, savings or retirement

³Item 1.

⁴Department Counsel submitted five Items in support of the SOR allegations. Item 3 is inadmissible, and it will not be considered or cited as evidence in this decision. It is an unsworn summary of an interview by an investigator from the Office of Personnel Management on November 5, 2012. Per Directive ¶ E3.1.20, it is not admissible in the absence of adoption by Applicant, or evidence from an authenticating witness.

⁵Item 3; AE A.

⁶Item 1.

investments, or other indicators of financial responsibility. He submitted a letter from a loan officer at his local bank stating that he had obtained and repaid a number of small personal loans since beginning his current employment, had paid down over \$10,000 of his total debt load, and improved his credit score by 70 points. The loan officer further stated that Applicant had one open loan and two deposit accounts, each with an average balance in the low four figure range.⁷

Applicant also submitted a letter of reference from a shop foreman who was his site lead supervisor for his current employer on an MRAP support program in Afghanistan several years ago. This former supervisor described him as an overqualified and very seasoned mechanic who worked hard every day without issue. The record lacks any other evidence concerning the quality of Applicant's professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. 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 (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

⁷Item 1.

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.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant admittedly has 49 unresolved delinquent debts, totaling more than \$38,000. These debts arose over the past several years despite his continuous employment, and he failed to resolve even one of the numerous small balances due. His ongoing pattern and history of inability or unwillingness to pay lawful debts raise security concerns under DCs 19(a) and (c), and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant has incurred substantial delinquent debts, which continue to date. He offered no evidence of any progress in addressing them, and continues to carry a large amount of unresolved debt. He failed to demonstrate that conditions beyond his control contributed to his financial problems, or that he acted responsibly under such circumstances. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning a delinquent debt, and Applicant admitted owing the debts alleged in the SOR. Accordingly, the record is insufficient to establish mitigation under any of the foregoing conditions.

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 pertinent facts and circumstances surrounding this case. Applicant is an accountable and experienced adult, who is responsible for the voluntary choices and conduct that caused the financial problems underlying the security concerns expressed in the SOR. His SOR-listed delinquent debts arose over the past decade, and remain unresolved despite his reported continuous employment throughout that period. He offered insufficient evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of his life to offset resulting security concerns. The potential for pressure, coercion, and duress from his financial situation remains undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his 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
Subparagraphs 1.a through 1.ww:	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.

DAVID M. WHITE
Administrative Judge