



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



In the matter of:)
)
) ISCR Case No. 14-03454
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

06/23/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 25, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on October 14, 2014, and October 29, 2014, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on February 26, 2015. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the

security concerns. Applicant received the FORM on April 3, 2015. As of May 21, 2015, he had not responded. The case was assigned to me on May 26, 2015. The Government exhibits included in the FORM (Items 2-5) are admitted.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor. He has worked for his current employer since September 2012. He is applying for a security clearance for the first time. He has a bachelor's degree. As of 2013, he had never married, and he had no children.¹

Applicant was hospitalized after a car accident in 2008. He had been drinking before the accident. He was charged with driving under the influence (DUI).² He was convicted and sentenced to probation for three years, six months of DUI education classes, and \$1,800 in fines and court costs.³

The SOR alleges four state tax liens totaling \$894; two delinquent debts to a city totaling \$778; five medical debts totaling \$4,983, including one medical debt for \$3,224; and an unpaid \$3,496 judgment from 2012 for a medical debt. Applicant denied owing all the debts alleged in the SOR. The judgment, tax liens, and debts are listed on an April 2013 combined credit report.⁴

The \$3,224 medical debt appears to be the basis for the judgment. Applicant stated the medical debt resulted from his hospitalization after his 2008 car accident. He stated that he assumed the bill was paid by his insurance company. He questioned the validity of the judgment because he stated that he was not served until after the judgment was awarded. Applicant was asked about the medical debts and judgment during his background interview in May 2013. He stated that he had retained an attorney to help him settle the account with the hospital. He stated that he intended to pay the bill once he had an agreement between his attorney and the hospital. In his response to the SOR, Applicant stated that he was willing to pay the hospital but not the collection company. There is no evidence that he made any attempt to overturn the judgment. The judgment is listed on the February 2015 Equifax credit report; the other medical debts are not.⁵

¹ Item 2.

² The DUI was not alleged in the SOR and will not be used for disqualification purposes. It may be considered for its effect on Applicant's finances, in the application of mitigating conditions, and when conducting the whole-person analysis.

³ Items 1-3.

⁴ "Credit reports are generally sufficient to establish the Government's prima facie case of Guideline F security concerns." See ISCR Case No. 10-03668 at 2 (App. Bd. Oct. 5, 2012).

⁵ Items 1-5.

The SOR alleges debts of \$425 (SOR ¶ 1.i) and \$353 (SOR ¶ 1.j) to a collection company on behalf of the city where Applicant received his DUI. The debts were reported by TransUnion and Experian on the April 2013 combined credit report. Applicant denied owing the debts. He stated the debts related to his accident and DUI. He stated that he paid all the fines and costs related to the accident, and that he had to prove to the court that he made the payments. The debts are not listed on the February 2015 Equifax credit report.⁶

SOR ¶¶ 1.a through 1.d allege state tax liens of \$253, \$220, \$213, and \$208 that were entered in 2009, 2010, and 2012. The liens were reported by LexisNexis on the April 2013 combined credit report. Applicant stated the liens were for property taxes on his boat. He told the background investigator in 2013 that he did not know where the property taxes are mailed or how and where he was supposed to pay the tax, but that every year the amount he owes is “taken out of [his] state income tax return.” Presumably, Applicant meant his state income tax refund. Applicant did not submit any documentation about the tax liens or the status of his state property taxes. The liens are not listed on the February 2015 Equifax credit report.⁷

Except for the issues alleged in the SOR, Applicant’s finances are otherwise unremarkable. The only derogatory item on the most recent credit report is the unpaid judgment. There is no evidence of financial counseling.⁸

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 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, administrative judges apply the guidelines 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.

⁶ Items 1, 3-5.

⁷ Items 1, 3-5.

⁸ Items 2-5.

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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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.” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard 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 EO 10865 provides that adverse 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 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 notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant had delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶ 1.f alleges a \$3,224 medical debt, which appears to be the basis for the \$3,496 judgment alleged in SOR ¶ 1.e. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). SOR ¶ 1.f is concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. 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;
- (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's financial problems were not related to conditions beyond his control. The medical debts, city debts, and judgment were related to Applicant's car accident and DUI. Applicant denied owing all the debts, and only the judgment is listed on the most recent credit report. I will give Applicant the benefit of the doubt and consider everything but the judgment as mitigated.

Applicant has refused to pay the judgment. There is no indication that it will be resolved within a reasonable period. I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay the judgment. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. There are no mitigating conditions applicable to the unpaid judgment.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in this whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f-1.i:	For 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.

Edward W. Loughran
Administrative Judge