



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03751

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel

For Applicant: *Pro se*

11/21/2015

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 April 2, 2015, 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 May 4, 2015, and requested a hearing before an administrative judge. The case was assigned to me on July 13, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 23, 2015, scheduling the hearing for August 20, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. The record was held open for Applicant to submit additional information. He did not submit any additional documentation. DOHA received the hearing transcript (Tr.) on August 31, 2015.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. He has worked for his current employer since December 2012. He is applying for a security clearance for the first time. He attended college for a period, but he did not earn a degree. He is married with three children, ages 26, 22, and 19.¹

Applicant has a history of financial problems. He filed Chapter 7 bankruptcy in 1993, and his debts were discharged in 1994. He filed Chapter 7 bankruptcy again in 2003, and his debts were discharged the same year. He had additional financial problems after the bankruptcy.²

The SOR alleges the two bankruptcies, two unpaid judgments totaling \$5,645, and 13 delinquent debts totaling \$26,827. Applicant admitted owing the debts alleged in SOR ¶¶ 1.a (\$21,373), 1.j (\$438), and 1.o (\$323). He stated that he was unable to admit or deny owing the remaining debts as he did not recognize the creditors. Credit reports from November 2012 and June 2014 substantiate the debts.³

Applicant stated that his first bankruptcy resulted from having three young children without medical insurance. He also stated that he and his wife got "quite a bit in debt with [the medical expenses] and a couple of vehicles and some other things." He stated that he was told he could file bankruptcy and "make it all go away." He stated that immediately after the 1994 bankruptcy, he "was given all this credit and it snowballed and it got right on top of [him] again, and it was so easy the first time, [he] fell right back into it the second time."⁴

Applicant bought a motorcycle in 2004. In about 2005, he lost his job because of a failed drug test.⁵ There is no evidence of any additional drug use. The motorcycle was repossessed in about 2005. The \$21,373 debt alleged in SOR ¶ 1.a is for a loan on another vehicle that was repossessed.⁶

¹ Tr. at 49; GE 1, 2.

² Tr. at 26; GE 2-5.

³ Tr. at ; GE 2-5.

⁴ Tr. at 19-20, 46; GE 2.

⁵ The failed drug test was not alleged in the SOR. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be used in assessing how it affected Applicant's finances, when determining the applicability of mitigating conditions, and when conducting the whole-person analysis.

⁶ Tr. at 20, 27-28, 50, 52; GE 2, 4, 5.

Seven of the delinquent debts alleged in the SOR, totaling \$3,115, were medical debts. The remaining debts were from what appears to be a pawn shop (SOR ¶ 1.d - \$600), trash-collection services (SOR ¶ 1.f - \$236), a credit card (SOR ¶ 1.j - \$438), a payday loan (SOR ¶ 1.n - \$745), and a returned check from a grocery store (SOR ¶ 1.o - \$323). Applicant established that he paid the \$236 trash-collection-services debt (SOR ¶ 1.f) in 2012.⁷

The judgments were awarded against Applicant in 2006 and 2007. Applicant stated that he did not recognize the plaintiffs in the cases. With the exception of the paid trash-collection-services debt, Applicant has not paid any of the debts or judgments identified in the SOR. He stated that a number of the debts were uncollectable because of the statute of limitations.⁸

Applicant stated that for years after 2007 or 2008, he did not buy anything if he could not pay for it with cash. He stated that he currently lives within his means, and he is attempting to rebuild his credit. He recently bought a house. With the exception of the paid trash-collection-services debt, none of the debts alleged in the SOR are listed on Applicant's current credit reports, predominantly because of the age of the debts. There are no other derogatory accounts listed on his current credit reports. He has not received formal financial counseling.⁹

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.

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."

⁷ Tr. at 17-19, 23-24, 44-45; GE 2, 4, 5.

⁸ Tr. at 21-22, 25-26; GE 2, 4, 5.

⁹ Tr. at 22-23, 47-49; Applicant's response to SOR; GE 2, 4, 5; AE A-D.

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.

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; and

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

Applicant's first bankruptcy resulted from having three young children without medical insurance. That was beyond his control. His subsequent financial problems were caused by overspending and the loss of a job because of a failed drug test. Those events were not beyond his control.

Applicant paid a \$236 debt in 2012 (SOR ¶ 1.f). That debt is mitigated. The medical debts are not readily identifiable, and they do not appear on Applicant's most recent credit report. Those debts are mitigated. Applicant has done a good job the last few years of curtailing his spending and paying his current bills, but he ignored his longstanding debts. He has not paid any of the other debts, including the \$323 debt to a grocery store for a returned check. He is relying on the statute of limitations and that the debts are no longer listed on his credit report. However, reliance on the statute of limitations does not constitute a good-faith effort to resolve debts. See e.g., ISCR Case No. 14-01231 at 3 (App. Bd. Feb. 10, 2015). Moreover, the judgments may still be enforceable.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are not applicable. AG ¶ 20(b) is only applicable to the first bankruptcy. I find that financial considerations concerns remain despite the presence of some mitigation.

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 my 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:	Against Applicant
Subparagraphs 1.e-1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraphs 1.k-1.m:	For Applicant
Subparagraphs 1.n-1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	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.

Edward W. Loughran
Administrative Judge