



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



In the matter of:)
)
) ISCR Case No. 17-03212
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

12/13/2018

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

On May 3, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. Applicant timely answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government’s file of relevant material (FORM) on July 18, 2018. Applicant received the FORM on July 24, 2018, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government’s evidence, and he provided a one-page response to the FORM dated August 15, 2018. He attached a two-page Security Title Agency, Inc. borrower’s settlement agreement concerning the refinancing of his mortgage loan. The Government’s evidence, identified as Items 1 through 7, is admitted into evidence without objection. The case was assigned to me on November 19, 2018.

Findings of Fact¹

Applicant is 54 years old. He graduated from high school in 1982. Applicant has been employed as an assembly technician by a federal contractor since 1985. He had a security clearance since then with no issues. Applicant reports no military service and he has been married since June 1993. Previously, he was married in 1983 and divorced one year later. He reports one adult daughter, and three adult step-children.

Applicant reported delinquent debts in section 26 of his security clearance application (SCA),² including failure to file his 2008 federal income tax return, and failure to file and pay his 2009 federal income taxes as required. Applicant stated he did not have enough money to pay \$12,000 for 2009 income taxes, and he did not remember the circumstances why he forgot to file.³ He stated that he has now entered into a repayment plan with the Internal Revenue Service (IRS). Applicant also reported credit-card debt and a Nissan automobile loan that he had cosigned for his step-son who was unable to make payments. The loan went into default and the vehicle was subsequently repossessed. He ascribes his wife's loss of employment in April 2015 as the reason for these debts.⁴ She had produced 40% of their household earnings.

In his enhanced subject interview (ESI) conducted by an Office of Management Personnel (OPM) investigator on July 20, 2017, Applicant stated that the 2007 vehicle, for which he cosigned, was repossessed in 2015.⁵ He received notice of a default judgment entered against him, in the amount of \$7,584, on April 4, 2017. This was a result of the repossession of his 2005 Ford. The creditor obtained a writ of garnishment against Applicant in June 2017. He claimed that this judgment at SOR ¶ 1.a was satisfied when the garnishments of \$400 or \$500 per month from his paycheck ended in June 2016.⁶ He produced no documentary evidence to substantiate this claim.

Applicant's wife went to the emergency room at a hospital in February 2016, and her treatment was out of network or part of their deductible. Again, the delinquent debt escalated to a judgment against Applicant in the amount of \$1,430 and a writ of garnishment by the creditor was filed at SOR ¶ 1.i. Applicant and his wife both had medical issues. Applicant claims he does not have the money to pay his uncovered medical debts at SOR ¶¶ 1.i to 1.o because he is only earning 60% of his ordinary

¹ Unless stated otherwise, the source of the information in this section is Applicant's September 2, 2016 Security Clearance Application (SCA) (Item 2).

² Item 2.

³ Item 2, p. 30.

⁴ Item 2, p. 34.

⁵ Item 3.

⁶ Item 3, p. 3, and Item 7.

income while he is out on disability since December 2016 for back related issues.⁷ The debt placed for collection in the amount of \$2,576 at SOR ¶ 1.p arose from a credit-card linked to his store-0club membership. Applicant stated that the debt in the amount of \$781 at SOR ¶ 1.q was for an old cell-phone account that he thought he had paid off. The debt in the amount of \$600 placed for collection at SOR ¶ 1.r was for an apartment that he cosigned with his step-son. Applicant admits owing the latter debt for cleaning fees, but he can not afford to pay it.

Applicant's financial difficulties started in late 2016 after his wife lost her job and he went out on disability for a back injury, thereby losing the opportunity for overtime earnings. Applicant's stepson is living with him due to his own difficulties, and Applicant is also raising two grandchildren, including one with a disability. (Item 3) This has caused enormous financial strain and Applicant stated he is "robbing Peter to pay Paul."⁸ He decided it was more important to pay his mortgage and put food on the table, and he let the credit card and medical debts go into arrears. (Item 3) Applicant stated he was planning to meet with a bankruptcy attorney in July 2017 and discuss filing a bankruptcy petition. However, no documentation has been provided to reflect that he actually filed for bankruptcy protection, except for documents produced by the government to show an earlier Chapter 7 petition was filed by Applicant in 1994.⁹ Applicant stated that he has no discretionary income left over at the end of each month and he is "drowning in debt." (item 3) He hopes to retire debt-free in three or four years.

In 2008, Applicant changed his IRS Form W-4 withholdings to 10. Thus, he was not paying enough federal income taxes and he owed the IRS \$12,000 in back taxes. He started a repayment plan with the IRS but did not follow through. For the last several years, he was supposed to get a \$3,000 to \$5,000 income tax refund, but the IRS withheld these payments and applied them to his tax debt. (Item 3) He started a new repayment plan with the IRS on July 25, 2017, and he is supposed to send the IRS \$25 a month for one year.¹⁰ He attached to his answer proof of only one payment to the IRS of \$100 on April 2, 2018.

In his Answer to the SOR, Applicant admitted owing the \$3,000 federal income tax deficiency, the three judgements, and all the other alleged consumer or medical debts totaling \$20,535. He provided no evidence of payment plans, except with the IRS, or financial counseling. He did not demonstrate a stream of payments of \$25 made to the IRS in compliance with the purported repayment plan. Instead, he provided evidence of one payment of \$100 to the IRS made in April 2018. Applicant provided no performance evaluations, character reference letters, or evidence of community involvement.

⁷ Item 3, p. 4.

⁸ Item 3, p. 4.

⁹ Item 6.

¹⁰ Item 3, p. 5.

Policies

This 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 new Administrative Guidelines (AGs) promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.

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, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, 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 national security eligibility 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.

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 applicant or proven, and has the ultimate burden of persuasion as to obtaining 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. Decisions include consideration of the possible risk that an applicant may deliberately or inadvertently fail to 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.

Section 7 of EO 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.” 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 financial considerations is set out in AG ¶18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance abuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to pay or fraudulently filing annual federal, state, local income tax returns or failure to pay annual federal, state, or local income tax as required.

Applicant’s delinquent debts alleged in the SOR are confirmed by his credit reports, answer to the SOR, and response to the FORM. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), 19(c), and 19(f), thereby shifting the burden to Applicant to produce evidence to rebut, explain,

extenuate, or mitigate the facts.¹¹ Applicant has not met that burden. Most of the delinquent debts have not been addressed.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 . . . , and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant has made little or no progress in resolving his delinquent debts. He has only provided evidence of one payment to the IRS and scant explanation how he became delinquent on these debts in the first place, aside from his wife's job loss, and his own back problems and lost overtime opportunities. Applicant has known about these tax problems and delinquencies for over two years since he self-disclosed them to his facility security officer, who made a Joint Personnel Adjudicative System (JPAS) entry in August 2016. (Item 7) The back taxes were from tax years 2008 and 2009, before his back injury. He has done nothing to address these tax delinquencies aside from two half-hearted repayment plans with the IRS. He did not follow through with his obligations to the bankruptcy trustee in 1994. His wife's unemployment and his own health issues were issues beyond his control. He has produced no relevant or responsive documentation either with his answer to the SOR, or in response to the FORM, to show that he acted responsibly under these adverse circumstances. Applicant has the burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur.

None of the mitigating conditions fully apply. Applicant's credit reports and answer to the SOR reflect delinquent tax debts and three unsatisfied judgments. Applicant did not provide enough details with documentary corroboration about what he did to address his SOR debts. He did not provide documentation relating to any of the

¹¹ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact;¹² (3) credible debt disputes indicating he did not believe he was responsible for the debts and why he held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these debts; or (5) other evidence of progress or resolution. Applicant failed to establish mitigation under AG ¶ 20(e) because he did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

In the FORM, Department Counsel informed Applicant that it was important for him to provide corroborating or supporting documentation of resolution of the debts in the SOR. (FORM at 3) Aside from Applicant's single payment to the IRS, there is no documentation that he has arranged for repayment of the consumer debts, medical debts, or judgments. There is no documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved the SOR debts. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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.

¹² "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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. Some of the factors in AG ¶ 2(d) were addressed under those guidelines. Notably, Applicant has reached out to the IRS to attempt a repayment plan, but he provided no concrete evidence of any follow-through stream of payments. Most importantly, Applicant has not addressed the delinquent tax allegation and judgments in the SOR or the medical delinquencies. He has not met his burden of production.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. He has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline F, financial considerations.

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 through 1.r:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge