



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No: 18-00044
)
)
Applicant for Security Clearance)

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

03/11/2019

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of financial problems, including a bankruptcy, unpaid Federal and state income taxes, and an automobile repossession. He did not disclose required financial information in his security clearance application. He failed to mitigate the resulting financial and personal conduct security concerns. National security eligibility for access to classified information is denied.

Statement of the Case

On January 22, 2018, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified*

Information or Eligibility to Hold a Sensitive Position (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR in writing on May 1, 2018, and requested that his case be decided by an administrative judge on the written record without a hearing (Answer). On June 21, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant and received by him on July 8, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit any additional information, refutation, or objections to the Government's evidence. Items 1 through 8 are admitted into evidence. DOHA assigned the case to me on February 14, 2019.

Findings of Fact

Applicant admitted the four financial allegations contained in the SOR. He denied the personal conduct allegation. He provided some explanations. (Item 2)

Applicant is 44 years old, married, and has three children, ages 22, 19, and 1 . He earned a bachelor's degree in 1996. In July 2016, he began a position with a defense contractor and works overseas. Prior to this position, he owned a martial arts business for many years and periodically worked for other companies. (Item 3)

In February 2016, Applicant submitted a security clearance application (SCA). Under Section 26: Financial Record, which inquired into his financial history, he did not disclose any financial delinquencies, tax liens, or automobile repossessions. (Item 3) During an October 2017 background interview with a government investigator, he was confronted with information about two tax liens, an automobile repossession, and a 2008 bankruptcy. Applicant stated that he failed to list the 2014 tax lien due to an oversight. He told the investigator he did not intend to mislead the Government about the information. He said his wife, a lawyer, manages their finances, implying that he is not involved in them. He said he was not required to disclose the 2008 bankruptcy because it was outside the time limit of the question. Although the automobile repossession account was not charged off until May 2016, which was after he submitted his SCA, the related delinquent loan payments and resulting deficiency debt occurred earlier. He did not disclose the repossession or the underlying debt on his SCA, or assert that it first arose after February 2016. He acknowledged to the investigator that he did not disclose this repossession. In his Answer, he said he did disclose it because he did not know that he owed any money on the automobile after the car was returned. (Items 1, 2, 8)

Based on credit bureau reports (CBRs) from December 2017 and May 2016, public records, Applicant's 2008 bankruptcy documents, and his admissions, the SOR alleged four financial security concerns. The status of each allegation is as follows:

(SOR ¶ 1.a) In 2013, Applicant entered into a car lease. Toward the end of 2015 he stopped making payments on the lease and it was repossessed. This \$8,716 automobile repossession debt was charged off in May 2016. Applicant stated he was trying to negotiate a settlement. (Items 2, 4, 8) It is unresolved.

(SOR ¶ 1.b) In 2014, the Internal Revenue Service (IRS) filed a \$29,236 income tax lien against Applicant for unpaid taxes related to a business he owned.¹ He said his wife secured payment of this debt with the IRS through a home equity loan. It will be paid by the future sale of the house, unless he and his wife pay it sooner. He did not explain or justify his failure to timely pay the taxes involved, or submit any documentation from the IRS corroborating the status of this debt or the settlement agreement. (Item 2) It is unresolved.

(SOR ¶ 1.c) In November 2017, Applicant's home state filed an income tax lien against him for \$3,629. Applicant said his wife negotiated the same settlement noted above with the state taxing agency. He did not submit documentation from the state corroborating his assertion, or explain why he failed to pay the taxes when due. (Items 2, 6) It is unresolved.

(SOR ¶ 1.d) In March 2008, Applicant and his wife filed a Chapter 7 bankruptcy. The bankruptcy petition listed outstanding income taxes owed to the IRS for years 2004, 2005, and 2006, and state income taxes owed for those years. It also listed outstanding student loans. The total liability owed for unpaid state and Federal taxes, and student loans was listed as \$194,206. Their unsecured nonpriority claims totaled \$127,857, and included numerous medical debts, personal loans, credit cards, and professional fees. Their personal and real assets totaled \$577,031; and their liabilities totaled \$893,643. The bankruptcy was discharged in June 2008. The final amount of debt discharged is unclear, but delinquent tax and student loan debts are not usually eligible. (Item 7)

The SOR alleged in ¶ 2.a that Applicant deliberately falsified information in his SCA because he failed to disclose the charged-off automobile repossession debt and the unpaid Federal tax lien filed in 2014. As noted above, Applicant said the 2014 tax omission was an oversight and not intentional. He said he did not report this repossession because he was unaware that he owed money on the lease.

In his Answer, Applicant said his finances are more stable now and he continues to pay down his remaining debts. He said the monthly family income now exceeds their monthly expenses. He stated that 10 years ago, he experienced financial difficulties because of the real estate market downturn and he was a sole business owner, raising three young children. (Item 2)

¹ The tax years are not in the record; however, Applicant listed his self-employment from 2010 to 2015 in his SCA. (Item 3)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying 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, 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(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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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.

Section 7 of Executive Order 10865 provides that an adverse decision 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are 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. Financial distress can also be caused by 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 misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal acts to generate funds.

AG ¶ 19 sets out disqualifying conditions that could potentially raise security concerns. Four are potentially applicable in this case:

- (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 file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a long history of not meeting financial obligations, as confirmed by a 2008 Chapter 7 bankruptcy in which he included a significant amount of debt. Since the discharge of debt in 2008, he has continued to accumulate more debt as documented by subsequent outstanding Federal and state income taxes and an automobile repossession. The evidence is sufficient to raise the above disqualifying conditions.

After the Government produced substantial evidence of the disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets out five conditions that could potentially mitigate financial security concerns in this case:

- (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 individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(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 a history of financial problems that is ongoing and casts doubt on his reliability and good judgement. His indebtedness is unresolved. There is insufficient evidence to establish mitigation under AG ¶ 20(a). Applicant did not provide a credible explanation for failing to pay outstanding taxes or resolve the repossession debt. While his wife may manage their finances, he remains responsible for the alleged SOR debts. He failed to establish mitigation under AG ¶ 20(b), as there is insufficient proof that the SOR-alleged debts arose from circumstances beyond his control or that he acted responsibly in addressing them. In fact, the evidence is to the contrary, as the IRS and state filed liens in order to obtain payments. There is no evidence that Applicant received credit counseling, or that his finances are under control. He did not submit evidence that he initiated a good-faith effort to resolve the automobile repossession or document that he has settlement arrangements with the IRS and state revenue agency. He did not establish mitigation under AG ¶¶ 20 (c), (d), or (g).

Guideline E: Personal Conduct

AG ¶ 15 explains the security concerns relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. One may be potentially disqualifying:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

The evidence established insecurity concerns under AG ¶ 16(a). Applicant failed to disclose required financial information. He provided no persuasive explanation or evidence for his failure to disclose the 2014 Federal tax lien and the vehicle loan delinquency/repossession, in his February 2016 SCA. Considering his past financial problems and the large amount of debt he accumulated since the 2008 bankruptcy, it is not credible that he failed to disclose any derogatory information due to oversight or because he did not think he was required to report the repossession, on the basis he did not know he owed money on the broken lease.

AG ¶ 17 provides conditions that could mitigate security concerns. Five are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant did not provide evidence that would support 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(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) 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.

AG ¶ 2(c) requires the ultimate determination of whether to grant national security eligibility include 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. I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 44-year-old man who has worked for a defense contractor since July 2016. According to a 2008 Chapter 7 bankruptcy petition, his financial delinquencies date back to 2004, when he did not timely pay Federal and state income taxes. In 2008, he discharged a large amount of debt. Nonetheless, his financial delinquencies continued accumulating into 2017, when his home state filed a tax lien. He has not established a track record of responsibly managing his finances, given his long history of non-compliance with fundamental legal obligations to pay taxes and resolve other debts. The record evidence leaves me with serious doubts about Applicant's judgment, reliability, and suitability for a security clearance. Applicant failed to mitigate the security concerns arising under the Financial Considerations and Personal Conduct guidelines.

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.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

Subparagraph 2.a:

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 a security clearance. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge