



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



In the matter of:)
)
) ISCR Case No. 18-00652
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

01/25/2019

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On March 28, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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) effective on June 8, 2017.

Applicant answered the SOR on May 21, 2018, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 18, 2018, and the hearing was convened as scheduled on November 27, 2018. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. The Government's exhibit list was

identified as hearing exhibit (HE) I. Applicant testified, but offered no exhibits. The record remained open until December 31, 2018, to allow Applicant to submit documentary evidence. He failed to submit any additional evidence.¹ DOHA received the hearing transcript (Tr.) on December 7, 2018.

Findings of Fact

Applicant admitted all the allegations. His admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 40-year-old employee of a defense contractor. He began working at his present job in January 2017. In addition to his contractor job, he works part time for a local restaurant. He served in the Air Force for 20 years, honorably retiring as a staff sergeant (paygrade E-5). He deployed to Afghanistan where he was assigned to an Army unit. He received the Combat Action Badge (CAB) for his actions while deployed. He is a high school graduate. He is married, but currently separated from his wife. He has a 12-year-old daughter. His daughter has anxiety issues and therefore only attends school part time. She participates in on-line home schooling the rest of the time. For this reason, Applicant's wife stays home with their daughter.²

The SOR alleged 16 delinquent debts totaling approximately \$22,783. The debts were listed in credit reports from June 2017, and March 2018 (SOR ¶¶ 1.a – 1.p).³

Applicant explained that his financial difficulties started in approximately 2012 when he was still in the Air Force. He received an administrative reduction in rank and his wife was unemployed. As a result of their reduced income, the family had a difficult time paying their bills. During his background investigation in October 2017, Applicant was confronted with his delinquent debts. He acknowledged most of them and stated he would get with a debt-consolidation company to work on resolving them. He failed to produce evidence of any such subsequent action by him.⁴

During his testimony, he admitted that he failed to contact any of his creditors or to take any action to resolve his debts, with two exceptions. He claims the credit-card debt in the amount of \$2,274 (SOR ¶ 1.m) is being paid from his military retirement account. He did not provide supporting documentation, but his March 2018 credit report shows a balance reduction as compared to the balance shown on his June 2017 credit report. He also claimed he is making payments toward the consumer debt listed in SOR

¹ I directed Department Counsel to contact Applicant to inquire whether he submitted any material. On January 11, 2019, she sent Applicant an email at his confirmed email address (See HE II). As of January 23, 2018, no reply was received from Applicant.

² Tr. at 5, 15-16; GE 1.

³ GE 4-5.

⁴ Tr. at 16-17; GE 2.

¶ 1.e. He failed to supply any supporting documentation showing those payments. His remaining debts are unresolved.⁵

Applicant did not produce a budget, but indicated that after paying all his monthly bills, he retained approximately \$600-\$700 at the end of every month. He plans to use this excess and the money he receives from his second job to pay his delinquent debts. He believes he just needs more time to take care of his debts. He failed to produce any documentation showing progress toward resolving his debts when the record was kept open for 30 days.⁶

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 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 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.

Under Directive ¶ E3.1.14, 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 by Department Counsel, and 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

⁵ Tr. at 23-25; GE 4-5.

⁶ Tr. at 28, 38, 40.

grants access to classified information. Decisions include, by necessity, 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 about 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

AG ¶ 18 expresses the security concern for financial considerations:

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 misuse, 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), 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; and

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

Applicant's debts are recent and multiple. He has not resolved any of the SOR debts. He is making payments from his military retirement account toward one debt. He failed to produce evidence showing that recurrence of his financial problems is unlikely. AG ¶ 20(a) is not applicable.

Applicant's wife's unemployment, caused by their daughter's medical issues, can be considered a circumstance beyond his control. However, he failed to act responsibly by establishing payment plans for the identified debts. Overall, the record evidence does not support that Applicant acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant did not present evidence of financial counseling. Given the unpaid status of his debts, Applicant's financial problems are not under control and good-faith efforts to pay or resolve the remaining debts are lacking. AG ¶¶ 20(c) and 20(d) do not apply. Applicant is making payments on one debt (SOR ¶ 1.m) and AG ¶ 20(d) applies to that debt.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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 that guideline, but some warrant additional comment.

I considered Applicant's federal contractor service and his military service. However, I also considered that he has made insufficient efforts to resolve his debts. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.⁷

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.l:	Against Applicant
Subparagraph: 1.m:	For Applicant
Subparagraphs: 1.n - 1.p:	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.

Robert E. Coacher
Administrative Judge

⁷ I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.