



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



In the matter of:)	
)	
)	ISCR Case No. 18-00952
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

02/12/2019

Decision

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant presented evidence sufficient to mitigate the security concerns arising under Guideline F, Financial Considerations. His financial delinquencies were attributable to circumstances beyond his control and he is acting responsibly by making payments on his debts as he is able. National security eligibility for access to classified information is granted.

Statement of the Case

On April 9, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR in writing (Answer) on May 2, 2018, and requested a decision based on the administrative record. Department Counsel submitted the Government's File of Relevant Material (FORM) on September 27, 2018. Applicant received it on October 2, 2018. The Government's evidence is identified as Items 1 through 10. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. On October 30, 2018, Applicant submitted a 24-page response to the FORM (Response). Items 1 through 10 and the Response are admitted into the record without objection. The case was assigned to me on January 16, 2019.

Findings of Fact

Applicant admitted SOR ¶¶ 1.b through 1.g. He denied SOR ¶¶ 1.a, 1.h, and 1.i. The SOR alleged Applicant had a Federal tax lien entered against him in 2015 for delinquent taxes from unstated years in the amount of \$36,130; was delinquent on child support payments in the amount of \$7,759; had a home in foreclosure in November 2014; and had six other delinquent consumer accounts totaling \$41,102. Applicant disclosed the majority of his debts on his 2016 security clearance application. (Answer; Response; Item 4.) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 47 years old. He has worked in his position since August 2008, although the contractor for whom he worked changed in 2013. He was unemployed from July 2006 to January 2007 and May 2008 to August 2008. He was married from 1999 through 2012. He has three adult children, two from his marriage and one from a prior relationship. He previously had financial difficulties, which led to a discharge of debt through Chapter 7 bankruptcy in 2001. (Item 4; Item 5; Item 10.)

Applicant attributes his delinquent accounts to his contentious divorce and unemployment. Their separation and divorce were caused by infidelity on the part of his ex-wife. (Response; Answer; Item 10.)

Applicant was indebted on a Federal tax lien entered against him in 2015 in the amount of \$36,130, as stated in SOR ¶ 1.a. The tax debt pertains to tax years 2010, 2011, and 2012, when Applicant failed to have proper payroll withholdings. He has since corrected his payroll withholdings. In his response, he explained that he has been repaying his tax debts since 2014 in the amount of \$700 per month, although his records do not show a steady stream of payments until 2016. Applicant provided IRS tax transcripts and transaction statements from his bank that show Applicant established a new installment agreement with the IRS in April 2016, and has made consistent monthly payments since September 2016. His balance for the 2010 tax year had decreased from \$18,820 to \$546, as of October 2018. Once 2010 is resolved, his payments will presumably be applied to his 2011 and 2012 unresolved Federal taxes. Applicant is resolving his Federal tax debt. (Answer; Response; Item 10.)

Applicant was indebted to a credit union on a charged-off account in the amount of \$20,939, as stated in SOR ¶ 1.b. In April 2017, Applicant established a payment plan with this creditor to resolve this debt through monthly payments of \$300. As of April 19, 2018, Applicant had repaid \$3,800 of this debt, as documented in a letter from this creditor. Applicant is resolving this debt. (Answer; Response.)

Applicant was indebted on a charged-off account in the amount of \$1,621, as stated in SOR ¶ 1.c. Applicant provided a letter from this creditor, dated April 16, 2018, offering to settle this account for six payments of \$175.66. He indicated he intended to resolve this debt as funds allow. (Answer.)

Applicant was indebted on a collection account owed to a telecommunications service provider in the amount of \$165, as stated in SOR ¶ 1.d. This debt was incurred when Applicant switched service providers, but was unaware of the delinquency. He paid this debt on April 21, 2018. (Answer.)

Applicant and his ex-wife purchased a residence in December 2004 for \$542,000, financed through a mortgage. Applicant paid that loan through May 2011, until he moved out due to his separation. For a year prior to moving out, he attempted to sell the property, but its value had declined and was worth less than what he owed on the mortgage. He received an offer that the bank approved, but his ex-wife would not sign the required documents needed to sell the property in 2012. He provided a copy of the real-estate listing and the purchase offer. His home was foreclosed upon by the mortgage holder in approximately November 2014, as stated in SOR ¶ 1.g. Applicant was delinquent on a home-owners association fee related to this property, totaling \$5,032, as stated in SOR ¶ 1.e. (Answer.) This debt was for homeowners association fees incurred after he moved out of the property and added assessments for not maintaining the yard after he vacated the property. Applicant credibly asserted that he contacted this creditor and was told this debt was resolved. (Item 4.)

Applicant was delinquent on a judgment filed against him in September 2010 in the amount of \$17,721, as stated in SOR ¶ 1.f. This account became delinquent after Appellant was laid off. He claimed to have a payment plan in place with this creditor. He provided nothing further in this regard. (Answer.)

Applicant was delinquent on his child support obligation in the amount of \$7,759, as stated in SOR ¶ 1.h. This debt was for his first child. He was unable to pay child support during his periods of unemployment. Applicant documented regular, \$150 monthly payments on this debt. His balance has been reduced to \$3,934. Applicant is resolving this debt. (Answer.)

Applicant was delinquent on a collection account in the amount of \$656 as stated in SOR ¶ 1.i. He denied this debt because he contacted both the collection agent and the original creditor “and both companies do not have information relating to amount balance or records stating that there’s an amount owed.” (Answer.) He indicated he was “ready, and able to pay” but the creditor could find no record of this debt. (Answer.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 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.

Finally, 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 relating to the guideline for 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 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (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 history of not meeting his financial obligations since at least 2010. He lost his home in foreclosure in 2014. He failed to timely pay his Federal income tax, which resulted in a 2015 tax lien filed against him. He also accumulated delinquent consumer debt as a result of his 2012 divorce and periods of unemployment. There is sufficient evidence to raise substantial security concerns under the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from Applicant's 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 (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;

(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 experienced financial problems that were due to events beyond his control, including his divorce and two periods of unemployment. He documented that he has been resolving his Federal tax debt in a responsible manner by presenting records of regular monthly payments since 2016. He also documented that he has been responsibly addressing his child-support arrearages, which occurred due to his unemployment, in a responsible manner. He reduced that balance from \$7,759 to \$3,934. An applicant is not required to resolve every debt. However, an applicant must demonstrate a plan for debt payment, accompanied by concomitant conduct. Here Applicant presented evidence of a serious intent to resolve his debts, as his funds allow. He has been in contact with the alleged creditors. He fully resolved the debt identified in SOR ¶ 1.d. He documented that he is making payments on SOR ¶¶ 1.a, 1.b, and 1.h. He documented he is working with the creditor to develop a payment plan to resolve SOR ¶ 1.f. He believes he no longer is liable for the debts identified in SOR ¶¶ 1.e, 1.g, and 1.i, due to the foreclosure of the home and/or his conversations with those creditors. He has acted reasonably, and in good faith to resolve the delinquencies he could, with the funds available. His financial problems were caused by situations beyond his control, he is addressing them in a responsible manner, and they are unlikely to recur. The above conditions provide mitigation.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 national security eligibility 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 pertinent facts and circumstances surrounding this case. Applicant has made substantial efforts to resolve his alleged debts in a responsible manner, as his funds allow. The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant access to classified information. National security eligibility is granted.

Jennifer I. Goldstein
Administrative Judge