



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



In the matter of:)
)
) ISCR Case No. 18-01439
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: *Pro se*

02/25/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On June 8, 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 on October 5, 2018, 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), and Applicant received it on December 5, 2018. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant submitted a timely response and his exhibits are marked as Applicant's Exhibits (AE) A through C. There were no objections by Applicant or Department Counsel and all Items and exhibits are admitted into evidence. The case was assigned to me on January 30, 2019.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 65 years old. He is married and has two adult children. He earned a bachelor's degree in 2000 and a master's degree in 2016. He has also earned several technical certificates.

Applicant disclosed on his August 2016 security clearance application (SCA) his employment history as follows:

- From May 2006-August 2007-employed in construction business;
- From August 2007 to June 2008-unemployed;
- From June 2008 to September 2009-employed;¹
- From September 2009 to February 2011-employed;
- From February 2011 to May 2015-unemployed-attending school, attempting to acquire clients for self-employment; and
- From May 2015 to the present-self-employed.²

The SOR alleges seven delinquent debts. Five are judgments entered from 2009 to 2013; including 2013 (SOR ¶ 1.a-\$4,005); 2011 (SOR ¶ 1.b-\$3,619); 2010 (SOR ¶ 1.c-\$21,810); 2010 (SOR ¶ 1.d-\$2,858); and 2009 (SOR ¶ 1.e-\$13,472). It also alleges a collection account debt in SOR ¶ 1.f with a balance of \$5,306 for a credit card, and a delinquent state tax debt from 2005 in the amount of \$18,160 in SOR ¶ 1.g. All of the alleged debts total \$69,230. Applicant's admissions and a September 2016 credit report corroborate the debts alleged in the SOR.³

Applicant attributed his financial difficulties to the economic downturn in 2007-2008. He worked in the construction business at the time and this impacted his employment. In his SOR answer, he stated that in 2006 he planned to purchase property and build a new house. He intended to use the equity in his old house to pay down a construction loan and reduce his mortgage payments. When the construction of the new house was completed, his old house had been on the market for a year and had not sold.

¹ Item 3. Applicant also listed that from February 2009 to September 2009 he was unemployed. This is inconsistent with his other entry.

² Item 3.

³ Items 2, 3, 4, 5, 6; AE A, B, C.

He converted his construction loan into a second mortgage. He stated that after two years and only one income, presumably his wife's, he had to do a short sale on the old house to sell it. He stated that by then, he had depleted his cash savings and pension.

Applicant stated in his answer to the SOR that another factor impacting his finances "was the loss of our records and return for the tax year 2005-2006."⁴ He stated:

Never before this particular year, or since, had we failed to file a return, and rarely did we owe taxes. Nevertheless, the return was apparently never filed and by the time we found out about it, the interest and penalties were high. We could only pay for either the federal or the state taxes at one time so we opted to pay the federal debt first, which was recently satisfied. We currently have an agreement to make payments on the state taxes.⁵

Applicant did not provide specific information as to when he learned his income tax filing for 2005 was delinquent or an explanation for why he did not address the delinquent state tax debt for 12 years. He provided a document from the state tax office showing in February 2017, he entered into an installment agreement to pay \$341 a month for 60 months beginning in March 2017. In his response to the SOR, he provided a document from the state tax office that shows he has reduced the balance owed on the \$18,160 debt to \$9,502 as of December 2018.⁶

Applicant stated in his SOR answer that due to his age and eyesight, employment in the housing industry is not feasible even if a position was available. He is self-employed and his income is much lower than it was in 2006.

In Applicant's answer to the SOR, he explained that his strategy to resolve his debts was to negotiate lower payments and temporarily suspend paying some creditors while paying his main obligations. This became untenable, and he suspended paying creditors with unsecured debts, such as those alleged in SOR ¶¶ 1.a through 1.f. He explained that his financial problems are not due to lack of self-control or poor judgment. He has not sought bankruptcy protection. He intends to satisfy all of his debts when he has the means.⁷

In Applicant's response to the FORM, he noted that the creditors alleged in the SOR are not the original creditors because the delinquent debts were sold. He believes the balances are inflated. He stated he will continue to negotiate payment of the debts. Applicant did not provide any documentary evidence of actions he has taken to negotiate, resolve, settle, or pay the judgments and collection debt alleged in the SOR. He did not

⁴ Item 2.

⁵ Item 2.

⁶ Item 6; AE B, C.

⁷ Item 2.

indicate if he has contacted any of the creditors. Applicant did not provide specific details about his income. He did not provide information about whether his wife is employed, her income, or if he provides support to others. He did not provide information about whether he has a budget and his current expenses. Applicant's credit bureau report from April 2018 reports he has approximately 13 revolving accounts to which he is making current monthly payments with a total cumulative balance of approximately \$37,572. In addition, he is making payments on three student loans totaling approximately \$21,481, and a monthly mortgage payment of approximately \$2,849.⁸

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(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 applicant or proven by Department Counsel, 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. 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

⁸ Item 4; AE A.

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 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.¹⁰

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

- (a) inability to satisfy debts;

- (c) a history of not meeting financial obligations; and

¹⁰ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

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

Applicant has five unpaid judgments from 2009 to 2013 and a collection account totaling approximately \$51,068. He has a delinquent tax debt from tax year 2005 in the amount of \$18,160. He has a history of being unable to pay or manage his debts. There is sufficient evidence to support the application of the above disqualifying conditions.

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 (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;

(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 unpaid judgments and a collection account. He has an installment agreement to pay his delinquent state tax debt. His delinquent financial obligations are recent and ongoing. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to the economic downturn that impacted the construction industry in 2007-2008. He also attributes it to being underemployed. These factors were beyond his control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. It has been more than 10 years since the economic downturn. Applicant has a tax debt from 2005 and judgments that were entered beginning in 2009. He did not provide evidence of any action he may have taken to pay, settle, or resolve any of the judgments or the collection account alleged in

the SOR. He did not provide an explanation for why he did not arrange an installment agreement with his state tax authority for his 2005 state income taxes until 2017. AG ¶ 20(b) has minimal application.

There is no evidence that Applicant has received financial counseling and that his debts are under control. There is no evidence he has made a good-faith effort to repay the judgments or otherwise resolve his delinquent collection debts. His delayed action in addressing his delinquent 2005 state income tax debt does not constitute a good-faith effort. AG ¶¶ 20(c) and 20(d) do not apply. AG ¶ 20(g) applies to Applicant's state tax 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 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 65 years old. His financial problems began in 2007-2008 when the economy impacted the construction industry. Applicant had periods of underemployment. It was not until February 2017 that he entered an installment agreement to pay delinquent state taxes from 2005. He has five judgments entered from 2009 to 2013. He did not provide evidence that he has contacted his creditors and made efforts to resolve his debts. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge