



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



In the matter of:)
)
) ISCR Case No. 18-01715
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*
01/29/2019

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 July 6, 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 hearing.

Department Counsel submitted the Government’s file of relevant material (FORM) on August 24, 2018. Applicant received the FORM on September 10, 2018, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided no response to the FORM. The Government’s evidence, identified as Items 1 through 9, is admitted into evidence without objection. The case was assigned to me on November 14, 2018.

Findings of Fact¹

Applicant is 56 years old. He served honorably in the U.S. Army from 1980 to 1994. Applicant has been employed as a senior systems administrator by a federal contractor since November 2016. He disclosed that he filed for Chapter 13 bankruptcy protection in January 2010, in section 26 of his SCA. Applicant had a previous security clearance from July 2007. Applicant married in 1980, and he has two adult children.

The SOR alleges that Applicant filed Chapter 13 bankruptcy petitions in April 1999, discharged in August 2001 (§ 1.a); in January 2010, dismissed in October 2011 for failure to make payments (§ 1.b); and again in April 2012, dismissed in August 2016. Applicant admitted all of these filings in his answer to the SOR in August 2018. (Item 2) He also admitted to a mortgage account that is past due (§ 1.d) and eleven medical delinquencies totaling \$1,492 placed for collection. (§ 1.e - 1.o) He states in his answer, that with respect to SOR § 1.c, there were arrears owed on his mortgage loan that couldn't be discharged. On advice of counsel, he voluntarily dismissed the bankruptcy case to try to work out a modification on his mortgage loan. That loan was sold to another company and is now reflected in SOR § 1.d and it remains delinquent with a past-due amount of \$30,794. (Item 6)

In his personal subject interview (PSI), Applicant stated that he fell behind financially when he took a \$25,000 pay cut after leaving his job as a network engineer, from 1996 to 2008, at a previous employer. He left to look for other employment opportunities. He became employed almost immediately as a computer technician. (Item 3) All of his creditors listed in his 2010 Chapter 13 bankruptcy case, were satisfied by 2014 and the bankruptcy case was ready to be discharged, but he could not get a modification on his mortgage loan. He fell behind on mortgage payments, which were \$768 a month at that time. (Item 4) He was \$23,000 in arrears when the loan was sold to another mortgagee. Applicant offered no plan for resolving this arrearage.

Applicant's wife fell down and sustained injuries in July 2017. (Item 4) She incurred medical bills reflected at SOR §§ 1.e to 1.o, totaling \$1,492, that were apparently not covered by health insurance. Applicant claims in his answer to the SOR, that he made payments to the creditor on each of these that resolved the alleged debts. He provided confirmation numbers as well, which were not helpful. He provided no documentation to substantiate his assertions in his Answer and show that these medical debts were resolved.

Applicant's 2010 Chapter 13 bankruptcy case documents include a statement of current monthly income and calculations of disposable income.² This reflects Applicant's

¹ Unless stated otherwise, the source of the information in this section is Applicant's July 26, 2017 Security Clearance Application (SCA) (Item 3), or his personal subject interview (PSI) on December 19, 2017. (Item 4)

² Item 9.

monthly gross earnings of \$4,948, and his wife's gross earnings of \$1,318. Their combined residuary or disposable income each month was negative \$140 in April 2012.

Applicant provided no response to the FORM or evidence that he received financial counseling. He provided no budget showing income against expenses, or other documentation to show progress on his delinquent debts. He discussed his wife's medical care and resulting bills and his intentions to repay these medical debts in his PSI in December 2017. He produced no documentary evidence that he has done so beyond the naked assertions in his answer. He provided no character references or performance evaluations.

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 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, 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. 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 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. 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.

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

Applicant's delinquent debts alleged in the SOR are confirmed by his credit reports and answer to the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.³ Applicant has not met that burden. The delinquent debts alleged in the SOR have not been adequately 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;
- (c) the individual has received, or is receiving financial counseling for the problem from a legitimate and credible source, such as 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 endured a \$25,000 pay cut when he voluntarily left his job as a network engineer in 2008. Arguably, this condition was beyond his control. Yet, despite his knowledge since at least 2017 that the delinquencies alleged in the SOR might affect his eligibility for a security clearance when he completed his SCA, and then reinforcing his intention to make payment arrangements in his PSI, he has done nothing to resolve these accounts. He has produced no relevant or responsive documentation either with his Answer to the SOR, or in response to the FORM. He has not demonstrated that he acted responsibly under the 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.

³ 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).

None of the mitigating conditions fully apply. Applicant's credit report and SOR list the delinquent debts to medical creditors totaling \$1,492. 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 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;⁴ (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.

Aside from Applicant's uncorroborated statements in his answer, there is no documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved the SOR debts. He did not describe financial counseling or provide his budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information. The FORM advised Applicant that he had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 3)

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

⁴ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or his] 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.

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 those guidelines. Notably, Applicant served honorably for 14 years in the armed forces. He has gone through an unexpected loss of household income. He has been employed most of his adult life and raised a family. Most importantly, Applicant has not addressed the specific allegations in the SOR. Instead, he has made uncorroborated representations that he did repay his delinquent medical debts. He has longstanding and ongoing financial problems going back to 1999 when he first filed for Chapter 13 bankruptcy protection. His mortgage arrearages have persisted for over five years. 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
Subparagraph 1.a – 1.o:	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