



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



In the matter of:)
)
) ISCR Case No. 18-01738
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

02/15/2019

Decision

BENSON, Pamela C., 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 April 12, 2016, Applicant submitted a security clearance application (SCA). On June 29, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, (Financial Considerations). 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 Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*; and the National Security Adjudicative Guidelines issued by the Director of National Intelligence, effective within the DOD on or after June 8, 2017.¹

¹ GE 1, 3.

Applicant answered the SOR on July 20, 2018. He admitted three of the SOR allegations, (¶¶ 1.b, 1.c, and 1.g), and he denied the others, (¶¶ 1.a, 1.d, 1.e, and 1.f). He submitted documents with his response to the SOR. Applicant requested that his case be decided by an administrative judge on the written record in lieu of a hearing.²

On August 24, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six items, was mailed to Applicant on August 27, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 45 days of his receipt of the FORM. Applicant received the FORM on September 4, 2018, and he provided a written explanation and additional documents in his response to the FORM. I labeled his documents as Applicant Exhibits (AE) A-D, which were admitted into evidence. Applicant did not object to Items 1 through 6, which I marked as Government Exhibits (GE) 1-6, and admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on December 13, 2018.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 34 years old. He has been employed full time with a Federal contractor since January 2018. His wife is not currently employed, and his family is living on his income. He had previously been employed by the same Federal contractor in another state from January 2015 to approximately January 2018. Applicant was unemployed from June 2009 to February 2010. He earned an Associate's degree in 2010, and he received certification as an electrician in 2015. He married in 2007 and has one daughter, age five. He earned two honorable discharges with the U.S. Air Force in 2009, and in 2016 from the U.S. Air Force Reserve.³

Financial Considerations

The SOR alleges seven delinquent accounts totaling approximately \$87,887, which are supported by credit reports submitted by the Government.⁴ Applicant did not disclose any adverse financial information on his SCA. He has five unpaid consumer debts, a medical account referred for collection, and delinquent Federal taxes owed for tax year 2016. In his response to the SOR, Applicant said that he was disputing the delinquent accounts alleged in SOR ¶¶ 1.a, 1.d, and 1.e, pursuant to the Fair Debt Collection Practices Act and the Fair Credit Reporting Act. Applicant believed the creditor could not provide a valid contract, promissory note, proof or validation of the alleged debt, and therefore, he could not be held responsible for the debt. Applicant

² GE 2.

³ GE 3.

⁴ GE 5, 6, 7, 8.

also claimed that one of the alleged debts is fraudulent. (SOR ¶ 1.f.) The record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges an account referred for collection in the approximate amount of \$60,639. In his response to the SOR, Applicant denied this debt and provided letters from the collection agency related to the debt. These letters addressed Applicant's dispute and noted that his file was now closed and a request was submitted to the credit reporting agencies to have his account removed. This debt is resolved. [Not needed since you find the documentation sufficient to resolve the debt.

SOR ¶ 1.b is a consumer charge account referred for collection in the amount of \$6,847. In his response to the SOR, Applicant admitted this account, but he did not believe the amount was correct. He did not provide any documentation to support this claim. He admitted that he had not made any payments on this account. In response to the FORM, Applicant admitted that he had just initiated contact with the creditor to see if a settlement agreement could be reached. He provided no corroborating documentation. This debt has not been resolved.⁵

SOR ¶ 1.c alleges a jewelry account charged off in the amount of \$4,916. In his response to the SOR, Applicant admitted this account, but he said this account became delinquent during his unemployment in August 2011. The credit report showed that the account became delinquent in November 2015.⁶ In addition, the SCA also showed that Applicant was unemployed from June 2009 to February 2010. As of August 2011, he was employed part time in the U.S. Air Force Reserve.⁷ In response to the FORM, Applicant admitted that he had just initiated contact with the creditor to see if a settlement agreement could be reached. He provided no corroborating documentation. This debt has not been resolved.⁸

SOR ¶ 1.d alleges a consumer credit account referred for collection in the amount of \$1,786. In his response to the SOR, Applicant denied this debt and said that he was disputing the debt pursuant to the Fair Debt Collection Practices Act and the Fair Credit Reporting Act. He did not provide any explanation for the dispute or provide supporting documentation. In response to the FORM, Applicant stated that the credit bureaus have informed him that the account was verified and he was obligated to pay it. Applicant is in contact with a law firm to see if a settlement agreement can be reached. He provided no corroborating documentation. This debt has not been resolved.⁹

⁵ AE A.

⁶ GE 5.

⁷ GE 3.

⁸ AE A.

⁹ AE A.

SOR ¶ 1.e alleges a consumer credit account referred for collection in the amount of \$1,289. In his response to the SOR, Applicant denied this debt and said that he was disputing it. He did not provide any explanation for the dispute or provide supporting documentation. In response to the FORM, Applicant stated that the credit bureaus have informed him that the account was verified and he was obligated to pay it. Applicant is in contact with a law firm to see if a settlement agreement can be reached. There is no supporting evidence of any effort by Applicant to repay, settle, or resolve this account. This debt has not been resolved.¹⁰

SOR ¶ 1.f alleges a medical account referred for collection in the amount of \$810. In his response to the SOR, Applicant denied this account and listed that the account was fraudulent. In response to the FORM, Applicant stated that he has taken measures to have the medical account removed from his credit report after he discovered the medical account was opened in another state (State 2) Applicant lives in State 1. He denied living in State 2, therefore, he believed it was a fraudulent account.

However, Applicant's spouse received military orders to report to State 2 while Applicant remained in State 1, as he said in his SOR response. In his SCA, Applicant, disclosed dates of residence in State 2. He provided a copy of his dispute with the credit bureaus and a copy of a fraud alert that he had filed. Applicant did not provide any documentation regarding communications he may have made with the medical provider to verify the account. His assertion that it is fraudulent, without verifying documentation, is not enough to show that this account is in fact fraudulent, especially considering his connections with the state where the account was opened. This account has not been resolved.¹¹

SOR ¶ 1.g alleges a Federal tax debt for tax year 2016 in the amount of \$11,600. In his response to the SOR, Applicant admitted this tax debt and said that he had enrolled in an installment agreement. He had been making monthly payments to the IRS. He did not provide supporting documentation of when he entered into the installment agreement, provide a history of monthly payments made in accordance with the installment agreement, or disclose the current amount of the tax debt.

In response to the FORM, Applicant said that he had "recently" elected to participate in the installment agreement and provided documentation from the IRS. The letter from the IRS showed that on August 21, 2018, Applicant had inquired about resolution of his delinquent Federal taxes for both tax year 2016, and tax year 2017, which was not alleged. The IRS stated that a revised installment agreement required Applicant to make \$200 monthly payments beginning on September 28, 2018. Applicant did not provide any documentation of any payments he has made to the IRS, or the current amount of his federal tax debt.

¹⁰ *Id.*

¹¹ AE A, C, D.

Applicant mentioned in his response to the FORM that the reason for him owing taxes for 2016 was due to him filing under the "Married Filing Separate" criteria. He has never had to pay taxes in the past, so he believed he must have made an error on the tax return. Applicant did not provide any explanation why he also owed taxes for 2017, as noted in his attached documentation.

Policies

When evaluating an applicant's suitability for a security clearance, 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 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 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 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 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 approximately \$87,887 of delinquent debt, to include Federal taxes, that is unpaid and unresolved, as shown on his credit reports. In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

The above disqualifying conditions apply.

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;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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.

There is insufficient evidence to apply any of the mitigating conditions. Applicant disputed four of the seven delinquent accounts, (SOR (¶¶ 1.a, 1.d, 1.e, and 1.f.)), but he did not provide a valid explanation for his disputes, and he did not provide any supporting documentation to show that his disputes with the original creditors were valid. He did not provide proof of his communication with the original creditor to determine whether a medical service account was in fact fraudulent. Applicant admitted responsibility for the other three debts, but he failed to provide any evidence to show that he is paying, resolving, or has settled any of those debts, to include any payments he has made for delinquent 2016 taxes. There is no evidence to show Applicant received financial counseling or that he acted responsibly under the circumstances in dealing with his creditors.

Applicant is credited with mitigating the debt in SOR ¶ 1.a. He consistently denied knowledge of this debt, and the only evidence that he owed it is a credit report. He disputed the debt, and it is removed from his credit report.

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 those guidelines, but some warrant additional comment.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a position of trust with the Government. An applicant is not required to be debt-free, but is required to manage his finances to meet his financial obligations.

Aside from the debt in SOR ¶ 1.a, Applicant failed to provide supporting documentation to mitigate his delinquent accounts, and he failed to demonstrate that he acted reasonably under the circumstances in dealing with his creditors. There is no showing by Applicant of any effort to pay, legitimately dispute, or otherwise resolve the debts in SOR ¶¶ 1.b through 1.g. Applicant has not provided a financial plan or a detailed budget of his current financial circumstances.

Overall, the record evidence leaves me with doubts as to Applicant's good judgment, reliability as well as eligibility and suitability for a security clearance. Because protection of the national interest is the principal focus of these adjudications, any

unresolved doubts must be resolved against the granting of eligibility to classified information.

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:	For Applicant
Subparagraphs 1.b through 1.g:	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 security to grant or continue Applicant's national security eligibility. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge