



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



In the matter of:)	
)	
)	ISCR Case No. 18-01764
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2019

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 July 3, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR on September 20, 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) on October 15, 2018. The evidence

included in the FORM is identified as Items 2-5 (Item 1 includes pleadings and transmittal information). The FORM was mailed to Applicant, who received it on October 29, 2018. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file objections or submit any additional evidence. Items 2-5 are admitted into evidence. The case was assigned to me on February 14, 2019.

Findings of Fact

Applicant admitted some of the allegations, with some explanation, and denied other allegations. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 39 years old. He has worked for a federal contractor since February 2017. Between 2014 and 2017, he was engaged in non-government employment. From 2006 to 2014 he was employed by other federal contractors. He has an associate's degree and a bachelor's degree. He has never married. He has two children.¹

The SOR alleged Applicant owed 17 delinquent debts totaling approximately \$123,000. These debts include past due, charged off, and collection accounts comprised of student loans, consumer debt, state tax liens, and child support obligations. Credit reports from May 2017 and March 2018 support the delinquent debts.²

Applicant explained that his debt problems were caused by not having enough money to pay all his obligations. Except for two of the student loan debts (SOR ¶¶ 1.a and 1.d), Applicant failed to provide documentation to support that he was addressing his debts through payment, dispute, or contact with the creditors. The status of his debts is as follows:³

Student Loan Debt. The SOR lists five delinquent student loans. Two accounts are to creditor A totaling \$57,764 (SOR ¶¶ 1.a and 1.d). Three accounts are to creditor B totaling \$21,970. Applicant's SOR answer included an attachment showing his account with creditor A. This account reflected that a loan consolidation occurred in May 2018, but it failed to detail what loans were consolidated. It further documented that Applicant paid \$58,069 in April 2018 and \$143 in May 2018 toward his balance owed. Through October 2018, it showed Applicant had not made any additional payments and that his current balance was \$73,943. There was no information in the document concerning the student loan debt to creditor B. These debts are partially resolved.⁴

¹ Item 2.

² Items 4-5.

³ Items 1, 3.

⁴ Items 1 (See attachment to Applicant's answer); 4-5.

Tax Liens. The SOR listed two state tax liens (¶¶ 1.k and 1.l) in the total amount of \$3,611. During his background interview with an investigator, Applicant claimed these liens were placed because he failed to file his state tax returns for 2013 and 2015, and pay the resulting tax owed. He stated that his wages were garnished and this tax debt was paid in January 2018. These two liens did not appear on his March 2018 credit report. They are resolved.⁵

Child Support. The SOR listed a delinquent child-support debt in the amount of \$7,075 (¶ 1.o). Applicant disputed that he was behind on his child support obligations. He maintained that he consistently has paid his \$200 weekly required amount. In his answer, Applicant admitted this debt and stated, “Arrears are paid bi-weekly.” His March 2018 credit report does not list this debt. This debt is being resolved.⁶

As stated above, Applicant failed to provide any documentation showing what action he has taken to resolve the remaining debts. While his March 2018 credit report shows that he disputed some debts, it does not provide the rationale for those disputes or their resolution. He did not provide any information about his current financial situation or a budget, other than to state that he can meet all his current obligations. There is no documented evidence of financial counseling.⁷

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

⁵ Items 3, 5.

⁶ Item 1, 3, 5.

⁷ Item 1, 3.

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 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;

(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 delinquent student loans and consumer debts that remain unpaid or unresolved. He also failed to timely file his 2013 and 2015 state income tax returns as required, resulting in the filing of two tax liens. I find all the 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;

(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's debts are recent and remain unresolved. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant did not state any circumstances why his financial problems were beyond his control, other than that he did not have enough money. AG ¶ 20(b) does not apply. Aside from paying two student-loan accounts, apparently being current on his child-support debt, and resolving his tax liens through garnishment, Applicant failed to

provide documentation showing efforts to pay or settle any of the remaining debts. There is no evidence of financial counseling. AG ¶¶ 20(c) and 20(d) do not fully apply. The involuntary garnishment appears to have satisfied his state tax debt. 20(g) applies.

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 the facts and circumstances surrounding this case. I considered his civilian employment and his payment toward two student loans, but I also considered his lack of progress in resolving his remaining debts. Applicant has not established a track record of financial stability.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance because of his financial status. 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.d, 1.k – 1.l, 1.o:	For Applicant
Subparagraphs 1.b – 1.c, 1.e – 1.j, 1.m – 1.n, 1.p. – 1.q:	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