



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 18-01774 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

02/05/2019

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. He failed to provide sufficient documentation to establish mitigation with respect to his consumer debts and failure to file Federal tax returns. National security eligibility for access to classified information is denied.

Statement of the Case

On June 25, 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implemented June 8, 2017.

Applicant submitted an Answer to the SOR on August 17, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted its file of relevant material (FORM) on September 12, 2018. Applicant received it on September 19, 2018. The Government's evidence is identified as Items 1 through 7. 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.¹ Applicant submitted no response to the FORM within the time period allotted. Items 1 through 7 are admitted into the record. The case was assigned to me on January 16, 2019.

Findings of Fact

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

Applicant is 52 years old and married. He earned an associate's degree in 2002. He has worked for his employer, a government contractor, since September 2004. He served on active duty in the Army from 1984 to 2004. (Item 3.)

Applicant is indebted to seven creditors for over \$40,000 in delinquent debt as listed in the SOR. His consumer debts are established by credit reports dated October 2017 and May 2018. He also failed to file his Federal income tax returns as required in 2015 and 2016. His debt total includes approximately \$4,000 owed to the IRS for the 2014 and 2015 tax years.² He also owes an unstated amount to the IRS for tax year 2016. His debts and delinquent tax filings are as follows. (Item 5; Item 6.)

Applicant failed to pay his 2014 Federal income taxes. Applicant explained that he was audited by the IRS for tax year 2013 and that he was working with a tax consultant to correct the 2013 filing, prior to filing 2014. He filed his 2014 Federal tax return in August 2017. His 2014 IRS tax transcript, dated August 13, 2018, shows that at that time he owed the IRS \$2,213 for 2014. (Item 2.)

Applicant failed to file and pay his 2015 and 2016 Federal income taxes, as stated in SOR ¶ 1.b. Additionally SOR ¶ 1.d alleged Applicant was indebted to the IRS for tax year 2015 in the amount of \$2,000. Applicant's 2015 IRS tax transcript, dated August 13, 2018, reflected that his 2015 Federal return was filed August 10, 2017. He owed \$2,762 for 2015 at that time. Applicant did not produce a tax transcript for the 2016 tax year. There is no evidence that he filed his Federal tax return for the 2016 tax year. (Item 2.)

¹ DoD Directive ¶ E3.1.7 requires responses to be submitted 30 days from receipt of the Government's FORM. The cover letter accompanying the case assignment indicated Applicant was given 45 days to submit a reply. He did not submit anything within either allotted time period.

² The SOR alleged that Applicant owed the IRS \$6,000 for the 2014 tax year. However, a debt of \$2,213 is reflected on the 2014 tax transcript.

Applicant explained in his Answer that he pays the IRS \$170 per month and will do so “until all taxes are paid in full.” (Item 2.) The IRS also garnishes “any refunds due [him] when [he] file[s] and put it towards overdue taxes.” (Item 2.) He provided a screenshot from his credit union account that documented one payment of \$170 to the IRS in August 2018. His 2016 Federal tax returns appear to remain outstanding. (Item 2.)

Applicant is indebted on a judgment filed against him in November 2016 in the amount of \$5,969, as stated in SOR ¶ 1.e. Applicant explained, “My wife took out credit cards in my name and I found out with a summons to court.” He claimed to have set up a payment plan with this creditor to resolve the debt through monthly payments of \$170. He provided a screenshot from his credit union account that documented one payment of \$170 and claimed it pertained to this debt. However, the creditor’s name is different on the statement. Without more information, I am unable to find that Applicant is resolving this debt. (Item 2; Item 7.)

Applicant is indebted on a charged-off credit card in the amount of \$12,964, as stated in SOR ¶ 1.f. This debt became delinquent in 2016. Applicant attributed this debt to his wife taking out another credit card in his name, unbeknownst to him. He claimed to have set up payment arrangements with this creditor to resolve the debt through monthly payments of \$150. He provided a screenshot from his credit union account that documented one payment of \$150 to a creditor of a different name. The evidence does not establish that this payment necessarily pertained to this debt. This debt remains unresolved. (Item 2; Item 5; Item 6.)

Applicant is indebted on a collection account in the amount of \$7,182, as stated in SOR ¶ 1.g. This debt became delinquent in 2016. This was another credit card account opened without Applicant’s knowledge by his wife. Applicant indicated he intended to set up payments to resolve this debt, but produced nothing further in that regard. This debt is unresolved. (Item 2; Item 6.)

Applicant is indebted on a past-due account in the amount of \$365, as stated in SOR ¶ 1.h. This debt became delinquent in 2018. Applicant indicated that this debt is being garnished from his military retirement check. This debt is unresolved. (Item 2; Item 6.)

Applicant is indebted on a charged-off account in the amount of \$5,930, as stated in SOR ¶ 1.i. This debt became delinquent in 2015. This was another credit card account opened without Applicant’s knowledge by his wife. Applicant indicated he intended to set up payments to resolve this debt, but produced nothing further in that regard. This debt is unresolved. (Item 2; Item 6.)

Applicant is indebted on a charged-off account in the amount of \$3,929, as stated in SOR ¶ 1.j. This debt became delinquent in 2016. This was another credit card account opened without Applicant’s knowledge by his wife. Applicant indicated he intended to set up payments to resolve this debt, but produced nothing further in that regard. This debt is unresolved. (Item 2; Item 6.)

Applicant is indebted on a collection account in the amount of \$542, as stated in SOR ¶ 1.k. This debt became delinquent in 2015. This was another credit card account opened without Applicant's knowledge by his wife. Applicant indicated he intended to set up payments to resolve this debt, but produced nothing further in that regard. This debt is unresolved. (Item 2; Item 6.)

Applicant's checking account screenshot dated August 13, 2018, reflected a balance of \$3.06. He appears to have few funds available to address his delinquencies or maintain solvency. (Item 2.)

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 under the financial considerations guideline 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 over \$40,000 in debt, which became delinquent between 2015 and 2018. He failed to file his Federal income tax return for tax year 2016, and he filed returns for 2014 and 2015 late. He is indebted on delinquent Federal taxes from 2014 and 2015 in an amount over \$4,000. There is sufficient evidence to establish disqualification under AG ¶¶ 19(a), 19(c), and 19(f).

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;

(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.

Applicant has insufficient income to meet all of his financial obligations. There is no evidence that he will be able to avoid delinquent accounts in the future. He remains indebted on consumer accounts and has not provided evidence of filing his delinquent 2016 tax return. His debt is ongoing. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to an IRS audit and to his wife opening credit cards without his knowledge. The IRS audit does not excuse Applicant from his duty to file and pay Federal income taxes. His wife's actions can be considered circumstances beyond his control. However, he failed to provide evidence that he addressed his delinquent consumer accounts in a reasonable and responsible manner once he learned of them. Mitigation under AG ¶ 20(b) is not fully established.

Applicant provided no documentation of financial counseling, but he did utilize the assistance of a tax preparation firm to provide him guidance during and after the tax audit. Even so, the record lacks evidence to suggest that his financial problems are under

control. While he has documented single payments to some of his creditors and has filed two of three delinquent tax returns, he lacks a track record of consistent payments on his consumer debts and to the IRS. The evidence does not establish full mitigation under AG ¶¶ 20(c) or 20(d).

Applicant did not claim to dispute any of his alleged delinquencies. He admitted all of the allegations on the SOR. AG ¶ 20(e) does not apply.

Applicant failed to show that he resolved his delinquent 2016 Federal tax returns. Further, he documented only one \$170 payment on over \$4,000 of delinquent tax debt. There is no documentation of a payment agreement with the IRS to resolve his remaining Federal tax debt. AG ¶ 20(g) does not mitigate the security concern.

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 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 is credited with the payments reflected on his August 2018 bank statement, and his efforts to file his delinquent tax returns for 2014 and 2015. However, these efforts came after receiving the SOR and do not demonstrate a track record of responsible action. Further, he failed to meet his burden to show he has acted responsibly by filing his 2016 tax returns. He may be eligible for national security eligibility in the future if he is able to document reasonable and responsible actions toward resolving his outstanding Federal returns and maintain solvency. At this time, the record evidence leaves me with 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.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.c: | Against Applicant |
| Subparagraph 1.d: | Against Applicant |
| Subparagraph 1.e: | Against Applicant |
| Subparagraph 1.f: | Against Applicant |
| Subparagraph 1.g: | Against Applicant |
| Subparagraph 1.h: | Against Applicant |
| Subparagraph 1.i: | Against Applicant |
| Subparagraph 1.j: | Against Applicant |
| Subparagraph 1.k: | 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 access to classified information. National security eligibility is denied.

Jennifer I. Goldstein
Administrative Judge