



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



In the matter of:)	
)	
)	ISCR Case No. 18-02268
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

12/17/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 20, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on January 19, 2019, and requested a decision on the written record in lieu of a hearing. On May 2, 2019, he changed his request to a hearing before an administrative judge. The case was assigned to me on June 24, 2019.

The hearing was convened as scheduled on August 8, 2019. Government Exhibits (GE) 1, 3, and 4 were admitted in evidence without objection. The objection to GE 2 was sustained. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. The record was held open until October 9, 2019, for Applicant to submit additional information. The deadline was extended at his request until November 5, 2019, and then again to November 18, 2019, and finally until

December 9, 2019. He submitted e-mails and attached documents that I have marked AE C through I and admitted without objection.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer since August 2016. He served on active duty in the U.S. military from 2003 to 2007 and from 2009 to 2013, during which he served multiple deployments to Iraq and Afghanistan. He was honorably discharged on both occasions. He attended college for a period, but he has not earned a degree. He is married for the third time after his first two marriages ended in divorce. He has a stepchild in high school. (Transcript (Tr.) at 21, 27-28, 38, 40, 76-77; GE 1)

Applicant experienced financial difficulties after his discharge from the military. He moved three times in order to find suitable employment. He was unable to keep tenants in his rental home, and his divorces further contributed to his financial distress. He also admitted that he was not as good at managing his finances as he could have been. (Tr. at 18-21, 28-32, 38-39, 43-44, 78-79; Applicant's response to SOR; GE 1)

The SOR alleges the mortgage loan on Applicant's rental home that was in foreclosure and eight delinquent debts with balances totaling about \$32,600. Applicant admitted owing all the debts except the \$186 and \$291 debts alleged in SOR ¶¶ 1.g and 1.h, which he stated were fraudulent accounts. Except as addressed below, the allegations are established through credit reports and Applicant's admissions.

Applicant lost his rental home to foreclosure in about 2015. Credit reports show a balance on the loan as \$18,370 after foreclosure (SOR ¶ 1.a). He was in contact with the creditor about resolving the balance, but those negotiations stopped after his clearance became an issue and his pay decreased. (Tr. at 42-49; Applicant's response to SOR; GE 1, 3, 4)

SOR ¶¶ 1.b and 1.c allege debts of \$13,900 and \$9,004 to the same creditor. In his January 2017 Questionnaire for National Security Positions (SF 86), he reported that he owed the creditor "\$20,000 (Estimated)." He wrote that he was "currently working with [creditor] to pay off all remaining debts and get back in good standing. I have allocated the vast majority of my current earnings into that effort as it is my primary concern." He further wrote that he "established a once monthly payment with [creditor] in order to satisfy my debt to them." He wrote in his January 2019 response to the SOR that he was working with the creditor to pay the debts, and he testified that he made payments. He documented a \$400 payment to the creditor on September 18, 2019. (Tr. at 55-62; Applicant's response to SOR; GE 1, 3, 4; AE F)

Applicant admitted owing the \$5,786 credit card debt alleged in SOR ¶ 1.d. He wrote in his response to the SOR that he had contacted the creditor to pay off the debt. He provided no documentary evidence of payment. (Tr. at 62-63; GE 3, 4)

Applicant settled the \$2,518 debt alleged in SOR ¶ 1.e for \$881, which he paid in January 2019. He paid \$300 in January 2019 to resolve the \$600 debt alleged in SOR ¶ 1.f. The disputed \$186 and \$291 debts alleged in SOR ¶¶ 1.g and 1.h are reported by Experian on the March 2017 combined credit report. They are not listed on the September 2018 Equifax credit report. (Tr. at 63-64, 69-71; Applicant's response to SOR; GE 3, 4; AE A, B)

Applicant admitted owing the \$379 debt to a pest control company (SOR ¶ 1.i). He wrote in his response to the SOR that the debt would be paid within a week. He did not provide any evidence of payment. (Tr. at 72; Applicant's response to SOR; GE 3)

Applicant has worked with a credit repair and monitoring company for some time. He stated that he also received financial counseling from another company. He estimated his annual "take-home" pay was about \$120,000 until his income increased significantly in about 2018 when his employer sent him on an overseas assignment. He is a 100% disabled veteran and receives about \$3,400 per month from the Department of Veterans Affairs (VA). He was placed in a lesser-paid position in about October 2018 when his clearance became an issue. He estimated that he is currently earning about \$65,000 annually from his employer. He stated that he plans to pay his debts. He indicated that if he receives his clearance, he will return to a higher-paying job, and he will be in a better position to pay his debts. (Tr. at 22-25, 33-40, 48-52, 73-75, 79-80)

Applicant testified that he earned almost \$200,000 in 2018. He received a federal income tax refund of about \$19,000 from tax year 2017. He stated that he filed his 2018 federal income tax return and expected a refund of about \$20,000. He indicated that he would use part of his refund to pay some of his debts. (Tr. at 66-71, 81-82)

Applicant wrote in a post-hearing e-mail on October 7, 2019, that his "tax return arrived last week and [he had] been calling and paying debts as rapidly as possible." (AE C) He was granted additional time to submit additional information and documentation.

Applicant wrote another e-mail on November 5, 2019. He indicated that he settled the \$18,370 mortgage loan (SOR ¶ 1.a) for \$9,175, through \$800 monthly payments. He wrote that he settled the \$13,900 and \$9,004 debts alleged in SOR ¶¶ 1.b and 1.c for \$6,500 and \$4,502, with monthly payments of the two debts of \$1,100. He also wrote that he paid the \$5,786 credit card debt alleged in SOR ¶ 1.d. He did not submit any supporting documentation. (AE D)

Applicant was reminded of the need for supporting documentation, and the deadline for submitting additional evidence was extended again. He submitted e-mails on November 18, 2019, and November 19, 2019. He indicated that he was working in a remote location on a military training event, which made it difficult to send documents. He also stated that his father fell ill, and that he was flying to his father's location. He attached documentation of the \$400 payment to the SOR ¶¶ 1.b and 1.c creditor, which was made on September 18, 2019 (this payment is addressed above). (AE E-G)

The deadline for Applicant to submit additional evidence was extended to November 25, 2019, and then again to December 9, 2019. He submitted an e-mail on December 9, 2019. He wrote that he was “really on track to getting everything paid off rapidly now.” He also wrote that his “wife adjusted some of the payment plans due to the credit counseling suggestions.” The only documentation he submitted with the e-mail is information from a financial counseling company, which was dated June 8, 2018. (AE H, I)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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.” The applicant 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 the applicant may deliberately or inadvertently fail to safeguard

classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (b) a history of not meeting financial obligations.

Applicant has a history of financial problems, including delinquent debts and a foreclosed mortgage loan.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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

(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.

Applicant moved three times after his discharge from the military in order to find suitable employment. He was unable to keep tenants in his rental home, and his divorces also contributed to his financial distress. His father fell ill, and he had to fly to his father's location. Those events were beyond his control. He also admitted that he was not as good at managing his finances as he could have been. Additionally, he has worked for his current employer since August 2016 and has earned significant income (almost \$200,000 in 2018, with income tax refunds of about \$19,000 and \$20,000 for tax years 2017 and 2018).

Applicant is credited with resolving the debts alleged in SOR ¶¶ 1.e and 1.f. Those allegations are mitigated. He denied owing the debts alleged in SOR ¶¶ 1.g and 1.h, and those debts are not listed on the most recent credit report. Those allegations are also mitigated.

Applicant made assertions about paying other debts, but except for one \$400 payment, he did not provide documentation. His documented payments total \$1,581 and all came after the SOR was issued. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). Additionally, an applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). Finally, he stated that he intends to address his delinquent debts. However, intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

The bottom line in this case is that in spite of numerous opportunities, Applicant's documented payments did not match his statements. There is insufficient evidence for a determination that his financial problems will be resolved within a reasonable period. I

am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. Applicant may reach a point where his finances are sufficiently in order to warrant a security clearance, but he has not established that he is there at this time. I find that financial considerations security concerns remain despite the presence of some mitigation.

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 relevant 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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's military service and particularly his deployments to Iraq and Afghanistan.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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:	Against Applicant
Subparagraphs 1.e-1.h:	For Applicant
Subparagraph 1.i:	Against Applicant

Conclusion

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.

Edward W. Loughran
Administrative Judge