



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



In the matter of:)
)
) ISCR Case No. 18-02272
)
Applicant for Security Clearance)

Appearances

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

05/08/2019

Decision

RICCIARDELLO, Carol G., 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 December 17, 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 the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on January 15, 2019, and requested a hearing before an administrative judge. The case was assigned to me on February 15, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 12, 2018. I convened the hearing as scheduled on April 16, 2019. The Government offered

exhibits (GE) 1 through 6.¹ Applicant testified and did not offer any exhibits. There were no objections and GE 1 through 6 were admitted into evidence. The record remained opened until May 2, 2019, to permit Applicant an opportunity to provide documents. He did not provide any documents and the record closed. DOHA received the hearing transcript on April 26, 2019.

Findings of Fact

Applicant denied the SOR allegations in ¶¶ 1.a and 1.b and admitted the allegation in ¶ 1.c. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 46 years old. He served on active duty in the military from 1991 until he retired honorably in 2011. He married in 1993 and has a grown daughter. He divorced in 1998. He remarried in 1999 and divorced in 2011. There were no children from this marriage. He has worked for a federal contractor since 2011.²

Applicant and his first wife filed Chapter 7 bankruptcy in 1994 and their debts were discharged the same year. Applicant and his second wife filed Chapter 13 bankruptcy in August 2000. It was converted to Chapter 7 in 2002, and their debts were discharged in 2003. In 2005, Applicant and his wife purchased a house and secured two mortgages. Applicant claimed his wife had a spending problem. While he worked overseas, he would return home and would notice large purchases had been made.³

In August 2007, Applicant and his wife filed Chapter 13 bankruptcy, which included a payment plan for the two mortgages (SOR ¶¶ 1.a (\$77,623) and 1.b (\$22,768)) that were in arrears. They did not complete the terms of the Chapter 13 bankruptcy because they filed for divorce. The divorce decree terms stated that Applicant would make the mortgage payments through September 2011. His wife was granted exclusive possession of the house until their bankruptcy discharge or she refinanced it by May 2014. If the wife could not refinance the mortgages or was 30 days or more late on a payment, then the house would be sold and the proceeds of the sale were to be split. Applicant would be responsible for the mortgage payments during the pendency of the sale of the house or if the wife refinanced the home by May 1, 2014. The Chapter 13 bankruptcy was dismissed in November 2011 for failure to make payments.⁴

Applicant's testimony was he had no idea when his wife moved out of the house. He said the house was sold, but he had no idea when or the amount it was sold for. He said after his divorce, his ex-wife filed bankruptcy. His understanding was the debts in

¹ Hearing Exhibit I is a demonstrative exhibit.

² Tr. 17-20, 24; GE 1.

³ Tr. 20-23; GE 2.

⁴ Tr. 25; GE 2, 5, 6.

SOR ¶¶ 1.a and 1.b were charged off. He believed that meant they were gone. He said he now understands the mortgages or a portion were not paid. When asked if he had any intention of paying the debts, he stated “Probably not, Your Honor. It’s a lot of money.”⁵ He said his ex-wife surrendered the house in her bankruptcy, and the debts were charged off. He said he reached out to the creditors in 2012 regarding keeping the house, but they were unwilling to work with him because of his ex-wife’s bankruptcy. He was aware in 2012 that the debts were on his credit report. Applicant never followed up on the status of the two mortgages or his financial responsibility to the creditors.⁶

Applicant completed a security clearance application (SCA) in August 2016. In it he disclosed the mortgage debt alleged in SOR ¶ 1.a. He stated that the house was awarded in his divorce to his ex-wife with a contingency that she refinance it in her name. He said she subsequently filed bankruptcy and surrendered the property. He was attempting to remove the debt from his credit report. He did not provide evidence of what he did.⁷

During Applicant’s March 2018 background investigation, he told the government investigator that his ex-wife was supposed to pay for the mortgages, but she defaulted on the loans. He said the loans were in both of their names. He was given time by the investigator to produce documents regarding his Chapter 13 bankruptcy, but did not.⁸

During Applicant’s background interview, he was confronted with the debt in SOR ¶ 1.c. He told the investigator that this was an energy bill. He said he checks his credit report once a week, and this debt was not on it. He was given time to produce supporting documentation to the investigator and did not. He said he would inquire about the account. In his answer to the SOR, Applicant admitted the debt in ¶ 1.c. At this hearing, he denied the debt and said he was contesting it.⁹

A credit report from October 2016 reports the debt in SOR ¶ 1.a as charged off in December 2013. It reports the debt in SOR ¶ 1.b as past due in the amount of \$1,915. A credit report from June 2018 reports the debt in SOR ¶ 1.a as charged off and the debt in ¶ 1.b as in collection.¹⁰

Applicant was provided an opportunity to provide documents to show the current status of the mortgage debts and whether he owed any deficiency. He did not provide

⁵ Tr. 26.

⁶ Tr. 23, 25-37.

⁷ Tr. 28-37; GE 1.

⁸ GE 2.

⁹ Tr. 41-43; GE 2.

¹⁰ GE 3, 4.

any information. He did not provide any documents to dispute the debts in the SOR or proof of payment.¹¹

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 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(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 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

¹¹ Tr. 42-44.

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 the guideline 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;
- (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 began accruing in about 2013. There is sufficient evidence to support the application of the above disqualifying conditions.

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; 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 defaulted on two debts associated with mortgages he and his wife obtained to purchase a house in 2005. They went through a divorce and the decree detailed how the house would be dealt with. Applicant's testimony was that he believed that when a debt was charged off he was no longer responsible for it. The debt in SOR ¶ 1.a was charged off. The debt in SOR ¶ 1.b is in collection. He told the government investigator he was going to get one of the debts removed from his credit report. He did not provide evidence of any action he took to determine the current status of these debts. It is unknown if there was a deficiency or if the mortgages were satisfied through his ex-wife's bankruptcy or when the house sold. Both debts remain on his credit report. He admitted and then denied the debt in SOR ¶ 1.c. The record was held open to allow him to provide substantiating evidence that he is no longer responsible for any of the debts. He failed to do so. AG ¶ 20(a) does not apply because the current status or resolution was not provided.

Applicant's divorce was beyond his control. For the application of AG ¶ 20(b) he must have acted responsibly under the circumstances. He failed to do so. His divorce decree detailed his responsibility regarding the house. Applicant did not provide evidence of his actions or that he acted responsibly. Despite owning the house jointly, he did not follow up on his financial obligation toward the mortgages they secured after his ex-wife's bankruptcy or after the house sold. Applicant indicated he would contact the creditor in SOR ¶ 1.c during his background interview, but failed to provide evidence of his actions to resolve this debt. AG ¶ 20(b) does not apply.

The evidence does not support the application of AG ¶¶ 20(c) and 20(d). There is no evidence Applicant has received financial counseling or has made a good-faith effort to repay the overdue creditors. Applicant was confronted with the relatively small debt in SOR ¶ 1.c during his background interview. He was going to contact the creditor to resolve it. He admitted the debt in answer to the SOR, but denied it at his hearing. He did

not provide evidence that he has disputed or resolved this debt. AG ¶ 20(e) does not apply.

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 that guideline, but some warrant additional comment.

Applicant is 46 years old. He served in the military and retired honorably. He has a history of financial problems beginning when his debts were discharged in Chapter 7 bankruptcy in 1994 and again in 2002. He then filed Chapter 13 bankruptcy in 2007, but it was not completed because he and his wife filed for divorce. Their mortgage debts were included in the divorce decree. Applicant failed to follow up on his responsibilities associated with the debts after his ex-wife filed bankruptcy. He was provided an opportunity to produce evidence to corroborate that he is no longer responsible for any of the debts alleged. He may not be responsible for one or both of the mortgages, but he failed to provide evidence to make this determination. He also failed to provide evidence that he disputed or paid the small debt alleged. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For 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.c: 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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge