



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



In the matter of:)
)
) ISCR Case No. 18-02332
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel

For Applicant: *Pro se*

09/24/2019

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the security concerns under the financial considerations guideline. He did not meet his burden to mitigate the financial considerations guideline. Eligibility for access to classified information is denied.

Statement of the Case

On October 15, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on November 24, 2018, and requested a hearing. The case was assigned to me on April 4, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 12, 2019, scheduling the hearing for August 22, 2019. I convened the hearing as scheduled.

I marked the Government's discovery letter and its exhibit list as Hearing Exhibits (HE) I and II. Government Exhibits (GE) 1 through 10 were admitted in evidence without objection. Applicant testified, presented two witnesses, and submitted Applicant's Exhibits (AE) A-E, which were admitted in evidence without objection. DOHA received the transcript (Tr.) on August 30, 2019.

Findings of Fact

In response to the SOR, Applicant admitted some allegations and denied some allegations. He is 48 years old. He married in 2005 and has two children as a result of that marriage. He has a third child who is a young adult from a former relationship. He has two young children with his current wife. Applicant completed his latest security clearance application in June 2017. He obtained a security clearance in 2007. (GE 1) Applicant obtained his undergraduate degree in 2002 and his master's degree in 2011. He has worked for his current employer as a network engineer since June 2016. (Tr. 103)

Financial

The SOR ¶¶1.a-1.m alleged failure to timely file state and Federal income tax returns from 2012 through 2016; delinquent federal tax debt in the amount of \$50,343 for tax years 2012 through 2015; state delinquent tax debt in the amount of \$60,896 for tax years 2010 through 2014; five judgments; and four collection accounts for an approximate total of \$50,000. Applicant admitted that his financial record looks bad, but that does not reflect who he is as a person.

Applicant explained that in 2007, he was financially stable, and had a good income. His one daughter lived with her mother. He attributes the debts to purchasing five properties between the years of 2007 and 2008. He revealed that he had extra money and wanted to explore the real estate market. He purchased the first property and rented the home until 2009. (Tr. 41) Applicant purchased a second property and had a tenant who paid the rent. Applicant purchased that house with his mother-in-law. (Tr. 42) He also purchased a property in 2007 with his sister. In 2008, Applicant purchased yet another house and was able to rent it. He explained that he had sufficient income from the rentals to pay the five mortgages. (Tr. 44) Applicant bought another house at an auction in 2008. (AX A) He purchased the last property with his wife in 2008. (Tr. 47) The total purchase price for the five properties (2007-2008) was about \$675,000. (Tr. 104) At that time, Applicant earned about \$95,000 a year. (Tr. 105)

Applicant attributed the market crisis in 2010 and 2011 for his financial problems. The tenants could not afford to buy the houses and the value of the properties declined. He also explained that one of the properties in another state was rented for lower income section 8 housing and tenants would put down a deposit and not pay the rent, but stay in the house. (Tr. 50) When houses in that area became vacant, there was vandalism. He tried to fix the houses but the agent-broker stated that they could not be

rented or listed. Applicant attempted to sell the houses but was not successful. The homes went to foreclosure. (Tr. 106) Applicant began using his credit cards to remodel the various properties. Applicant had five mortgages to pay and no tenants paying rent. He became overwhelmed. (Tr.52) He managed to sell one house at a loss and another at cost. (Tr. 52)

At the same time, Applicant explained he became involved in a 2010 custody dispute involving his daughter from a former relationship. (AX B) The mother of the daughter went to court to ask for more child support and he was ordered to pay about \$700 a month. The child support increased to \$963 in year 2010-2011. (Tr. 55) Applicant became delinquent in the child support and he incurred large legal fees from court proceedings. He also paid \$150 in arrears, which made for a total monthly payment of \$1,000 in year 2014. This amount was automatically deducted from his paycheck. (Tr. 56) Applicant completed his child support obligations in 2016. (Tr. 57, GX 4)

Applicant further explained that his sister with whom he had purchased two properties had a stroke in 2009. She lost her employment, and Applicant was now responsible for the entire mortgage on the properties. Applicant also was diagnosed with diabetes and he incurred medical expenses. (Tr. 61)

Applicant does not want to file for bankruptcy. He was emphatic that he is not irresponsible and did not live beyond his means. Until about 2010, he was financially stable. He thought he was making good investments and did not want to give up. Also, he had no idea that the market would fall or that his sister would have a stroke. He knows he made mistakes and he has learned from them. He explained that he would not venture into the real estate market again. His plan was to resolve one financial issue at a time. When the child support ended in 2016, he paid some non-SOR debts. (Tr. 63) Applicant summed up by saying that another catastrophe occurred when his home roof leaked in 2011, causing him to lose important documents, including tax materials. He stated that stopped him from preparing his taxes because he was overwhelmed and did not have the information needed to prove his losses. (Tr. 65)

As to SOR 1.a, and 1.b, Applicant admitted that he had not filed Federal (2012 through 2016) and state income tax returns (2013 through 2016) in a timely manner. At this time, Applicant has filed all his income tax returns according to tax transcripts in 2017 for the years 2012 through 2016. (GX 4) The forms were completed by a tax professional. When he filed the income tax returns, he included the 1099 forms for the mortgage deficiencies. His reason for the delay in filing was that he was totally overwhelmed with his financial situation. (Tr. 120) In 2017, Applicant obtained the services of a community tax group to help him resolve remaining tax issues for tax year 2017. (AX D) Applicant still does not have a payment plan in place with the IRS. (Tr. 125) He noted that he has not been happy with the work that the community tax program has partially completed on his behalf.

SOR 1.c is the amount of delinquent federal taxes for years 2012, 2013, 2014, and 2015. The total taxes due is \$50,343. Applicant began making payments of varying

amounts to the IRS beginning in 2018. (AX C) He also returned a refund from tax years 2016, 2017, and 2018. (Tr. 67) He believes that he has paid about \$30,000 to the IRS. (Tr. 81) The payments are not consistent due to lack of money. Due to penalties and interest, he still owes about \$60,000. (Tr. 128)

As to SOR 1.d, Applicant admits that he is indebted for delinquent state taxes for approximately \$60,896 for tax years 2010 through 2014. He submitted a letter from the state comptroller, dated September 17, 2018, indicating that Applicant agreed to establish a payment plan. The agreement called for a down payment of \$700 on May 8, 2018, and monthly payments of \$450 until the balance is paid in full. (AX E) He did not furnish any proof, but he stated that he has been making the monthly payments to the state. (Tr. 130)

SOR 1.e is a 2011 judgment in the amount of \$24,971. This is related to a credit card debt. Applicant has not engaged in any payments or plans until he has the tax situation under control. (Tr. 84)

SOR 1.f is a 2012 judgment in the amount of \$10,929. He stated at the hearing that he has not made any payments to date. (Tr.131)

SOR 1.g is a 2012 judgment for a homeowner's association (HOA) fee in the approximate amount of \$1,675. Applicant presented documentation that all assessments owed to the HOA included in the lien filed against the home unit have been paid in full. (AX C)

As to SOR 1.h, this is a 2014 judgment in the amount of \$1,735 for an HOA fee on Applicant's residence. (GX 6) He stated that he moved from the house in 2012. He cannot find proof that it was paid even though his wife used a money order. He noted that his wife drove to the lawyer's office to pay it. He noted that the house has been sold. (Tr. 90)

As to SOR 1.i, this is a 2014 judgment in the amount of \$4,661. Applicant is not certain if he paid or settled this account. There appeared to be a similar account listed in 1.l for \$1,021 held by the same bank. He believes he settled the debt in 1.l, but he could not be certain.

As to SOR 1.j, a phone collection account in the amount of \$1,267, Applicant presented a statement that shows a payment of \$418.22 that was made on November 2017. (AX C) He claims that the debt was settled for that amount. (Tr. 91) Applicant paid this with a credit card. (Tr.135)

As to SOR 1.k, a collection account in the amount of \$5,178. Applicant admitted that he has not paid this debt. (Tr. 91) He stated that it was charged off by the company.

SOR 1.m is a medical debt in collection for \$165. Applicant explained that it was initially a problem with the insurance and he disputed it, but later paid the debt. He believes it was a long time ago and he has no proof of payment. (Tr. 93)

Applicant earns approximately \$107,000 yearly and his wife works part time as a nurse. She earns about \$18,000 a year. He had a 401(k), but cashed out a portion to pay for some taxes. Applicant believes that he has about \$7,000 in the account. He has a small savings account. He believes that his monthly net remainder is about \$100. In 2018, he visited his family abroad. (Tr. 115) In 2019, he went again to visit a sick family member.

Applicant's employer testified that he has known applicant since 2003. At one point in time, he was Applicant's direct supervisor. The employer stated that Applicant is an outstanding employee. He is professional and produces outstanding results. Applicant's employer was not aware of the breadth of the current financial security concerns. (Tr. 15) Applicant is considered to be a valuable employee. (Tr. 17) His employer interacts with Applicant on a daily basis. (Tr. 24)

Applicant's sister, who had a stroke several years ago, testified at the hearing. She had difficulty speaking, but she confirmed that she co-signed with Applicant on the purchase of two of the properties in 2008. (Tr. 142)

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 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(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."

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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F (Financial Considerations)

The concern under this 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his testimony and his credit reports establish three disqualifying conditions under this guideline: AG ¶¶ 19(a) (“inability to satisfy debts”), 19(c) (“a history of not meeting financial obligations”) and 19(f) (“failure to file or fraudulently file annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.”)

The security concerns raised in the SOR may be mitigated by the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20 (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 admitted and his credit reports confirm that he has been indebted to the Federal and state government for income taxes for an approximate total of \$111,000. He failed to timely file his federal and state income tax returns from 2012 through 2016. In 2017, he filed the required income tax returns. His reasoning for not filing was being overwhelmed by his financial issues that began in 2010. This explanation is not acceptable. AG 20(a) is not fully applicable because he does not have his finances under control.

He bought five properties in 2007-2008. When the real estate market crashed, his financial problems began. His tenants could not pay rent and he could not cover the almost \$650,000 in mortgages for more than a few months. His sister, who had co-signed a note with him, had a stroke in 2009 and she could no longer work. He lost her financial help. He was dealing with child support issues and he was diagnosed with diabetes. These were all beyond his control. To his credit, the child support obligations are no longer a concern. AG 20(b) partially applies, but he did not act responsibly under the circumstances.

He incurred other delinquent debts by using credit cards to pay expenses. He recently filed his Federal and state income tax returns but still owes a significant sum of money in taxes. He began making some payments for the federal debt in late 2018, but he still does not have a payment plan in place. In 2018, he agreed to a settlement for the state income taxes, and has started payments. He has paid one or two small debts and he intends to pay all his delinquent debts. He does not want to file for bankruptcy.

He had no documentation for some of the accounts he stated that he had paid due to a flood in his house caused by a leaking roof, resulting in lost documents. Applicant has been steadily employed. He experienced financial problems due to circumstances beyond his control, but he did not establish that he acted responsibly in the wake of those unforeseen circumstances. Applicant's inaction regarding his taxes and his other debts precludes a conclusion that his finances are mitigated. He did not receive credit counseling. AG 20 (c) does not apply. He submitted some receipts for payments or settlement of some debts. Applicant submitted an agreement with the state, dated September 28, 2018, to pay taxes. Due to the lack of evidence submitted by Applicant, it is impossible to conclude he made sufficient good-faith effort to resolve his debts or that his financial situation is under control. AG 20 (g) partially applies in this case.

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 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.

Applicant credibly testified at the hearing. He goes to work each day and supports his family. Applicant has a good reputation in the workplace. He knows he has made mistakes in the past, and will not enter the real estate market again. He has learned from his mistakes. He was passionate about the fact that he wanted to achieve a lot for his family. He was challenged with child support issues, but he did not shirk from them. However, his judgment with respect to the filing and paying taxes provides doubts despite his intention and commitment to pay all his delinquent debts. He has paid smaller debts. He is steadfast that he wants to pay his debts and not file for bankruptcy. On balance, Applicant did not produce information sufficient to mitigate the security concerns about his finances.

Overall, the record evidence leaves me with some questions and doubts as to Applicant's eligibility for a security clearance at this time. Because protection of the interests of national security is the principal focus of these adjudications, any remaining doubts must be resolved by denying eligibility for access to sensitive 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
Subparagraphs 1.a – 1.m	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's eligibility for a security clearance. Continued eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge