



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 18-02867
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

10/15/2019

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 March 13, 2019, 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 April 9, 2019, and he requested a hearing before an administrative judge. I was assigned the case on May 15, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 28, 2019,

and the hearing was convened as scheduled on July 24, 2019. The Government offered exhibits (GE) 1-7, which were admitted into evidence without objection. Applicant testified, but offered no exhibits at the hearing. The record remained open until September 27, 2019, to allow Applicant to submit documentary evidence. He offered exhibits (AE) A-D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on August 5, 2019.

Findings of Fact

Applicant admitted all the allegations, except SOR ¶ 1.j, with some explanation. 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 48 years old. He has worked for a defense contractor since June 2016. From December 2014 to May 2016, he worked as a DOD civilian employee. He worked for federal contractors from 2012 to 2014. He experienced unemployment from August to December 2011. He served honorably in the U.S. Air Force for 21 years, retiring in August 2011 in the grade of master sergeant (E-7). He is a college graduate. He is divorced (married from 1991 to 2007) and has three adult children. (Tr. 6, 18-20; GE 1)

The SOR alleged Applicant owed the Federal Government for delinquent taxes in the amount of approximately \$1,625 for tax year 2017 and approximately \$771 for unnamed tax years. It also alleged he owed on eight collection, charged off, and past-due accounts totaling approximately \$20,201. Applicant admitted in his October 2017 security clearance application (SCA), in his January 2019 statement to a defense investigator, and in his answer to the SOR that he failed to pay his 2015 and 2017 federal income taxes. Credit reports from December 2017, June 2018, and May 2019 support the remaining delinquent debts. (GE 1, 3, 5-7)

Applicant has a history of financial problems dating back to 2007. He claimed those past situations were caused by his divorce in 2007. Concerning the financial problems outlined in the SOR, Applicant attributes his difficulties to making a poor financial decision in 2014 when he bought an expensive car requiring monthly payments of approximately \$1,100. He also admitted spending money on his girlfriend, which would have been better served paying his debts. He noted that he paid back a debt to the Department of Veterans Affairs (VA) of approximately \$7,000 when he failed two courses for which his GI Bill paid. He also claimed that his income was reduced during this time, and that he assumed the expenses associated with his mother's death and funeral. No documentation supports these assertions. He provided no proof of seeking financial counseling. (Tr. 22, 24, 33-34, 42)

The status of the SOR debts is as follows:

SOR ¶¶ 1.a and 1.b (federal tax debt)-\$1,625 and \$771. Applicant owes these amounts for the tax years 2015 and 2017. He claims he contacted the IRS to set up a

payment plan online, but because his account has a freeze code, he was unable to complete the transaction. He documented his IRS online history showing his logins from April 18, 2016, two on July 16, 2019, and two from September 20, 2019. He also documented that on September 20, 2019, he was unable to complete an online payment transaction. Applicant was given in excess of 60 days after the hearing to show his actions to resolve these debts. He failed to document any payment agreements with the IRS or proof of payments toward the debts. These debts are unresolved. (Tr. 23-26; GE 3; AE D)

SOR ¶ 1.c (utility debt)-\$297. Applicant claimed this debt was for a utility at a former residence. He claimed he called them. He failed to document any payment agreements or payments made. This debt is unresolved. (Tr. 27; GE 6)

SOR ¶ 1.d (auto debt)-\$1,638 (balance of \$36,632). This is the car debt from 2014. Applicant is behind on his payments. He failed to document any payment agreements or payments made. This debt is unresolved. (Tr. 29; AE 3)

SOR ¶ 1.e (consumer debt)-\$5,779. Applicant admitted this debt and claimed that the creditors wished to settle with him, but he did not have the funds to do so. This debt is unresolved. (Tr. 28; GE 6)

SOR ¶ 1.f (consumer debt)-\$3,275. Applicant admitted this debt and claimed that the creditors wished to settle with him, but he did not have the funds to do so. This debt is unresolved. (Tr. 28; GE 6)

SOR ¶ 1.g (mortgage payment)-\$4,817 (balance of \$255,850). Applicant admitted that he was behind on his home-mortgage payments. He claimed his credit union is working with him and he adds extra funds when he can to his regular monthly payments. He failed to provide any supporting documentation. This debt is unresolved. (Tr. 30; GE 6)

SOR ¶ 1.h (consumer debt)-\$432. Applicant admitted this debt. He failed to produce evidence of payments or a payment plan. This debt is unresolved. (SOR Answer; GE 6)

SOR ¶ 1.i (medical debt)-\$219. Applicant admitted this was a medical debt for his daughter that his ex-wife was to pay. He failed to produce evidence of payments or a payment plan or anything documenting his ex-wife's responsibility for the debt. This debt is unresolved. (Tr. 27-28; GE 6)

SOR ¶ 1.j (student loans)-\$3,744 Applicant did not recognize this debt. He contacted the school where he received his bachelor's degree and it provided a letter stating that Applicant had no outstanding financial aid accounts, including student loans. This debt is resolved. (Tr. 32; AE B)

Applicant produced two character letters from his supervisor and a Navy officer. Both describe Applicant as trustworthy and reliable. They recommend that he receive a security clearance. (AEC).

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 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 consumer debts and federal tax debt that remain unpaid or unresolved. 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;

(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'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. His reduced income and costs associated with his mother's death are circumstances beyond his control. But he readily admitted that buying an expensive car in 2014 and spending large amounts of money on his girlfriend were not wise decisions. He failed to take responsible actions to address his debts or timely pay his federal taxes. AG ¶ 20(b) does not apply. Applicant failed to provide documentation showing efforts to pay or settle any of the debts, except for the student loan debt (AG ¶ 20(e) applies to SOR ¶ 1.j). There is no evidence of financial counseling. There is no documentary evidence showing he made arrangements with the IRS to resolve his tax issues or pay his delinquent consumer debt. He failed to document his dispute of his daughter's medical debt. AG ¶¶ 20(c) and 20(d), and 20(g) do 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 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 military service and his civilian employment, but I also considered his lack of progress in resolving his debts and paying his federal taxes. 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.i:	Against Applicant
Subparagraph 1.j:	For 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