



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



In the matter of:)
)
) ISCR Case No. 18-02583
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

04/01/2020

Decision

COACHER, Robert E., Administrative Judge:

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

History of the Case

On February 28, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 May 18, 2019. The case was originally assigned to another judge on September 3, 2019. A notice of hearing was sent to Applicant on October 15, 2019, setting the hearing for December 2, 2019. Applicant appeared at the hearing and the case commenced. Shortly into the proceeding, the judge became concerned that Applicant was not prepared for the hearing. Rather than proceeding with

the hearing, the judge continued the case to allow Applicant additional time to present evidence concerning his financial status. The judge stressed how important it was for Applicant to show up at the next hearing with documentation supporting his position. (See hearing transcript received on December 11, 2019 (Tr.1 at 31-34)) The case was reassigned to me on January 8, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 29, 2020, and the hearing was convened as scheduled on March 3, 2020. The Government offered exhibits (GE) 1 through 7, which were admitted into evidence without objection, except GE 6 which Applicant objected to, but was overruled. Department Counsel's exhibit list and discovery letter were marked as hearing exhibits (HE) I-II. Applicant testified at the hearing, but he did not offer any documentation. DOHA received the second hearing transcript (Tr.2) on March 11, 2020.

Findings of Fact

In his SOR answer, Applicant admitted SOR allegations 1.a-1.b, 1.h, and 1.n, with explanations. His admissions are incorporated as findings of fact. He either denied, or neither admitted nor denied the remaining SOR allegations. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 34-year-old employee of a defense contractor. He began working at his present job in March 2017. He pointed out that his current position is somewhat irregular in providing full-time employment. He has been laid off several times and also works less than a full-time schedule. He has a high school diploma. He is twice divorced (married from 2006-2007 and from 2010-2015) and has three children. (Tr.2 at 21, 23; GE 1)

The SOR alleged that Applicant failed to file his 2013-2017 federal and state income tax returns as required; and that he accumulated 14 delinquent debts (consumer debts, medical debts; and various other debt) totaling approximately \$6,600. He admitted failing to file his federal and state tax returns during his October 2017 background interview. The debts were listed in credit reports from August 2017, May 2018, February 2019, and November 2019 (SOR ¶¶ 1.a – 1.p). (GE 3-7)

Applicant attributed his tax filing problems to his divorce from his second wife. He claimed that in 2013 he could not resolve how to handle his taxes with his ex-wife, so he just did not file his federal or state tax returns for that year and continued not to file for subsequent years. He claimed that he went to two tax preparing services, but he did not use either one to file his returns. He still has not filed his federal or state returns for tax years 2013-2017. (Tr.2 at 28-29, 36-40; GE 2-3)

Applicant failed to document that he addressed any of his delinquent debts, either through payments, or proof of a legitimate dispute over the debt. He claimed that he was on a payment plan for one of the debts (SOR 1.c) and making small payments until he could no longer afford to do so. He failed to provide documentation supporting this assertion. All the debts remain unpaid. In addition to the unpaid SOR debts, Applicant also testified that he was in arrears on his child support, behind on four car

payments, and delinquent on his cell phone bill (these debts were not alleged in the SOR, so I will not consider them for disqualification purposes, but I may consider them when applying the mitigating conditions and whole-person factors). Applicant stated that he was unable to make any progress toward paying his debts because of his reduced work schedule. He has tried to supplement his income with outside construction work, but it has not produced significant income for him. Applicant stated that some of his medical debts were due to a heart condition that he was treated for in 2014 or 2015. (Tr.2 at 22-23, 29-34)

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 failed to file his 2013-2017 federal and state income tax returns and accumulated 14 delinquent debts. He provide no documentation that his taxes have been filed or that he made payments toward his debts. I find all the above 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 unpaid. He failed to produce evidence showing that recurrence of his financial problems is unlikely. On the contrary, he testified that he has additional financial problems in the form of an +overdue car and cell phone payments. AG ¶ 20(a) is not applicable.

Applicant's sporadic work schedule and medical issues are circumstances beyond his control. However, he did not act responsibly by failing to take any action to resolve his debts or file his federal and state tax returns. Overall, the record evidence does not support that Applicant acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant presented no evidence of financial counseling. He has done nothing to address his tax returns or his delinquent debts. He presented no evidence that he was working with the IRS or the state tax authority to file his tax returns. He failed to put forth good-faith efforts to pay or resolve the debts or file his tax returns for 2013-2017. He failed to document any viable dispute of any debts. None of the above mitigating conditions 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 relevant 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.

I considered Applicant's federal contractor service, his medical issue, his sporadic working schedule, and the circumstances surrounding his indebtedness. However, I also considered that he has made no efforts to resolve his debts or file his federal and state tax returns. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his future debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. (I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.)

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.p	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge