



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-02816
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

11/02/2020

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On November 1, 2019, in accordance with DoD Directive 5220.6, as amended (Directive), Administrative Guidelines (AG) implemented June 2017, the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on February 21, 2020. The Department of Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 15, 2020, scheduling the hearing for September 29, 2020. The Government offered Exhibits (GE) 1 through 11, which were admitted into the record without objection. Applicant testified in his own behalf but did not submit any documents at the hearing. At Applicant's request, I kept the record open until October 29, 2020 for additional information. Applicant

submitted three exhibits, which I marked as AE A-C. There was no objection to the documents. DOHA received the transcript (Tr.) of the hearing on October 13, 2020.

Findings of Fact

Applicant, age 51, is divorced and has one son. He obtained his undergraduate degree in 1996. Applicant completed his security clearance application on July 26, 2018. He has held his current security clearance for about 8 years. Applicant was medically discharged from the military in 1989. (Tr. 16) He has had extended periods of unemployment beginning in 2011. He has been employed with his current employer since June 2018.

The SOR alleges that Applicant failed to timely file his Federal and state income tax returns for tax years 2011 through 2018; has a child-support arrearage account in collection for \$12,295; a charged-off delinquent loan in the approximate amount of \$12,019 which resulted in a 2015 judgment; and a 2013 judgment in the amount of \$5,689 for a condominium association fee. Applicant admitted the allegations. He provided explanations for each allegation.

Applicant acknowledged his debts, and that he has not filed his Federal and state income tax returns but this was triggered by the 2010 traumatic event of his wife leaving the marriage and having a child with another man. In addition, his wife took Applicant's son with her and would not allow Applicant to see him. (Answer to SOR)

Applicant admitted that following the separation and divorce from his wife he was preoccupied with so much anger, depression, custody battles, legal costs, child support, and a series of financial challenges that he was prevented from being financially responsible. (Answer) He added that he had been financially responsible for 40 years. He emphasized that he had no debt and an excellent credit score. However, he stated that he began to address the tax filing issues when he learned about his security clearance issues. (Tr. 55)

Applicant stated that as to SOR allegation 1.a, that he failed to file his Federal and state income tax returns for tax years 2011 through 2018, he said he made multiple requests of the IRS for records of income reports for the missing years in order to allow the returns to be prepared and filed. He had always filed his income tax returns, and he always paid his taxes before 2011? (Tr. 21) He believes that the amounts of tax withheld by employers for the periods in question were adequate to meet his obligations. He stated that he and his father have tried without success to contact the IRS, but he has never had a response from them. (Tr. 60) He submitted requests for transcripts for the years in question, but the requests are dated February 2019. (AE C) Applicant recently hired a tax advisor to help him resolve the tax issue. (AE B) He has filed his 2018 and 2019 Federal income tax returns.

As to SOR 1.b, Applicant stated that he cannot file the state income tax returns until he has filed the Federal tax returns. He believes that his withholding amounts are

sufficient to meet his state tax obligations. He has now filed his state tax returns for 2018 and 2019. (Tr. 58)

As to 1.c, the child support arrearage of \$12,295, Applicant states that an arrearage continues to exist. He was unemployed for 14 months in 2016, and he was still required to pay \$756 a month, (Tr. 23) His paycheck is being garnished. The arrears are not as high as they were. Applicant stated that he and his wife are trying to arrange an agreement that does not involve the child support system. (Tr. 33) Before the unemployment, he was paying the child support. (Tr. 29)

As to SOR 1.d, the 2015 judgment resulting from a delinquent loan of \$12,019 for a motorcycle, Applicant stated that he attempted to return the motorcycle, even though he was never notified that it needed to be returned. (Tr. 25) He stated that it no longer appears on his credit report. It has not been resolved. (Tr. 73)

As to 1.e, the 2013 judgment for condominium fees in the amount of \$5,689.24. He stopped paying the fees in 2010. Applicant's wages were garnished to satisfy the debt. (GX 8) He arranged a settlement for the account in April 2017, but did not submit any documentation showing settlement of the debt. He stated that he paid it in cash. (AE A)

Applicant earns about \$125,000 a year. He has not had any financial counseling. (Tr.91-94) He states that his credit score has greatly improved. (Tr. 31) He used his retirement savings to pay daily bills when he was unemployed on various occasions.

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, “Any determination under this order adverse to an applicant shall be a determination 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 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 credit reports, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(c) ("a history of not meeting financial obligations"); and AG ¶ 19(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").

The security concerns raised in the SOR may be mitigated by any of 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; and

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

Applicant's delinquent debts are long-standing, and he acknowledges that he has not resolved some of them. Applicant stated that he settled one debt but he did not provide proof that he paid the settlement amount. Thus, from the record, even if he made the payment, he provided no evidence that he made any good-faith efforts before he received the SOR. He has had his wages garnished for child support arrearages. Applicant also has not filed his Federal and state income tax returns for a number of years and is just now getting a preparer to help him file. He has not received financial counseling. AG ¶ 20(a) is not established. Applicant's delinquent debts remain unresolved. Although he promises to address them and states that he does not owe that much in delinquent debt, he did not provide proof of debt resolution.

AG ¶ 20(b) is not established. While Applicant's unemployment on various occasions was beyond his control, along with his divorce and depression, he has not acted responsibly to address the resulting debts or file his tax returns for many years. His actions to file his Federal and state tax returns for tax years 2018 and 2019 are good first steps in correcting his tax situation; however, he did not make enough timely progress on his tax returns for tax years 2011 through 2017 to mitigate SOR ¶ 1.a.

AG ¶ 20(c) and 20(d) are not established. Applicant did not receive any financial counseling; nor are there clear indications that his financial situation is under control. He admitted that his actions in this case were prompted by the security clearance process. He has not filed his income tax returns for many years, with no adequate explanation, and is just now beginning to address the issues. He has made some progress in recent years to address the tax filing issues, it is not sufficient. His judgment and reliability are in question.

Applicant failed to meet his burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.e against Applicant.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including Applicant's work career and unemployment, I conclude that Applicant has not mitigated the security concerns raised by his financial indebtedness and failure to file his Federal and state income tax returns from 2011 through 2017. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.e:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge