



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



In the matter of:)
)
) ISCR Case No. 19-02908
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

05/27/2020

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On November 19, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on December 27, 2019, and requested a decision on the written record in lieu of a hearing.

The Government's written case was submitted on February 10, 2020. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 19, 2020. As of April 15, 2020, he had not responded. The case was assigned to me on May 12, 2020. The Government exhibits included in the FORM are admitted in evidence.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He has worked for his current employer since August 2018. He served in the U.S. military from 1989 until he was honorably discharged in 1999. He is married for the second time. He has three adult children. (Items 3, 4)

Applicant has a history of financial problems, including unpaid federal income taxes, a Chapter 13 bankruptcy case, repossessed vehicles, and delinquent debts. He attributed his problems primarily to maintaining two households while he worked in a different state than his wife, leaving a good-paying job to move to another state to help his daughter who was suffering from depression, and helping his mother and other family members financially. He moved from State A to State B in 2014 for a better job, while his family remained in State A. He moved back to State A to help his daughter in 2016. (Items 2-8)

The SOR alleges Applicant's Chapter 13 bankruptcy case; approximately \$26,000 in back federal income taxes; and 11 delinquent debts totaling about \$46,000. Applicant admitted all the allegations except the delinquent debts alleged in SOR ¶¶ 1.i (\$697), 1.j (\$525), and 1.l (\$155), which he asserted were paid. The three disputed debts are listed on the most recent credit report in evidence, which was obtained in May 2019. Applicant did not submit any documentation to corroborate his statements that the debts were paid. (Items 2, 7, 8)

Applicant and his wife filed a Chapter 13 bankruptcy case in December 2014. Under Schedule D, Creditors Holding Secured Claims, the petition listed \$213,195 in secured claims, which included a mortgage loan and four vehicle loans. Under Schedule E, Creditors Holding Unsecured Priority Claims, the petition listed debts of \$26,000 to the IRS for back taxes and \$3,300 in attorney's fees. The petition listed debts totaling \$50,881 under Schedule F, Creditors Holding Unsecured Nonpriority Claims. The IRS filed claims totaling about \$42,000 against the bankruptcy for back taxes, penalties, and interest. The IRS claimed Applicant's wife owed \$2,989 for tax years 2006 and 2007, and Applicant owed the remainder for tax years 2008 and 2010 through 2013. (Items 2-8)

The Chapter 13 bankruptcy case was dismissed in April 2016 for failure to make the plan payments. Applicant and his wife paid a total of \$24,036 into the plan, but none of the taxes or other unsecured debts were paid. The trustee and Applicant's bankruptcy attorney received \$5,388. The remainder was paid to secured claims such as the mortgage arrearage (\$5,118) and a vehicle loan (\$13,529). (Items 2-5)

Applicant's bankruptcy petition indicated that he was on a payment plan with the IRS. (Item 5) He reported his bankruptcy, tax issues, and delinquent debts on an August 2018 Questionnaire for National Security Positions (SF 86). He wrote the following as the reason for the tax problems: "Change in employment due to family issues. My marriage was in shambles so we moved back to [State A] and the reduction in income caused me to default on my installment plan with the IRS." (Item 3)

Applicant told the background investigator in November 2018 that he was on a \$700 per month installment plan with the IRS, and the payments were automatically deducted from his bank account. In his December 2019 response to the SOR, he wrote that he had been on a monthly “installment plan for 12 months and [had] not missed a payment.” (Items 2, 4)

Applicant received financial counseling as a requirement of his bankruptcy. (Item 5) He indicated in his response to the SOR that he was working with several of his creditors on settlements. He did not provide any corroborating documents about his taxes or his debts, and he did not respond to the FORM.

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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(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.”

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

Analysis

Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (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 a history of financial problems, including unpaid federal income taxes, a Chapter 13 bankruptcy case, repossessed vehicles, and delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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

(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 attributed his financial problems primarily to maintaining two households while he worked in a different state than his wife, leaving a good-paying job to move to another state to help his daughter who was suffering from depression, and helping his mother and other family members financially. Those conditions were mostly beyond his control. His tax issues were not beyond his control.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. *See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018).* A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).*

Applicant wrote in his December 2019 response to the SOR that he had been on a monthly installment plan with the IRS for 12 months and had not missed a payment. However, he wrote in his August 2018 SF 86 that he had defaulted on an installment plan, and he told the background investigator in November 2018 that he was on a \$700 per month installment plan with the IRS, and the payments were automatically deducted

from his bank account. He failed to document an installment plan or any payments to the IRS.

Applicant made assertions about paying other debts, but he did not provide documentation. The Appeal Board has held that “it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts.” See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). Additionally, he stated that he was working with several of the creditors on settlements. However, intentions to resolve debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant’s financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or made a good-faith effort to pay his taxes and debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant’s unpaid federal taxes and delinquent debts are not mitigated.

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. I also considered Applicant’s honorable military service.

Overall, the record evidence leaves me with questions and doubts about Applicant’s eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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

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.

Edward W. Loughran
Administrative Judge