



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



In the matter of:)	
)	
)	ISCR Case No. 19-03683
)	
Applicant for Security Clearance)	

Appearances

For Government: John Lynch, Esquire, Department Counsel
For Applicant: *Pro se*

03/24/2021

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On March 6, 2020, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 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 within the DOD on or after June 8, 2017. Applicant responded with an undated answer to the allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on September 22, 2020.

On October 9, 2020, a notice setting the hearing for November 3, 2020, was issued. The hearing was convened as scheduled. The Government moved to amend the SOR at allegation 1.a, to set forth the names of both the creditor and the collection agent; allegation 1.e to change a date from 2007 to 2004; and to add an allegation (1.g) stating

“the mortgage account for your home in [--] was foreclosed in about 2017 due to your inability to pay your monthly mortgage payment.” No objections were entered and the amendments were adopted.

The Government offered 10 exhibits (Exs.), noted as Government Exs.(GExs.) 1-10, and Applicant presented two packets of material and a letter, collectively marked as Applicant’s Exs. (AExs.) 1-4. With no objections, all exhibits were accepted into the record. The transcript of the proceeding (Tr.) was received on November 13, 2020. With no additional materials submitted, the record was closed on November 20, 2020. Based on the testimony, materials, and record as a whole, I find Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 60-year-old executive level, executive assistant. He has served in that capacity since April 2019. He currently maintains a security clearance. Applicant graduated high school and attended some college. He was honorably discharged from the United State military in 2004 at the rank of E-6 after 21 years of service.

Twice divorced, Applicant has one adult child. He married his second wife, a medical therapist, in 2004. During their marriage, they bought a duplex in a distant state as an investment and rental property. (Tr. 32) During their marriage, Applicant’s wife managed the bills, including matters related to real estate. (Tr. 50) Applicant divorced this wife in mid-2015 after a 15-month separation. Applicant was locked out of the marital home in September 2015 by an unknown individual or entity. (Tr. 19) He quickly moved into an apartment within the regionally high-priced rental market, then to a less expensive unit to save money. (Tr. 19)

In mid-2016, Applicant started a two-year period of unemployment after losing a job. (Tr. 26-30) Initially released from his job for cause, Applicant disputed the reasons cited. The matter was appealed, favorably reviewed, and some back pay was restored. In the interim, he sent applications to “quite a few” potential employers without success. (Tr. 31) Meanwhile, his ex-wife declared Chapter 13 bankruptcy. It appears at least two accounts noted in the SOR were referenced in her bankruptcy or their divorce paperwork.

Applicant has acquired several delinquent debts. Reference was made during the hearing to several credit reports. It was noted that some of the reports contained erroneous information, such as incorrect home addresses, or accounts balances that are slightly off. Applicant believes these errors could be more numerous than he has cited. (see Tr. 65-72) At issue in the SOR are the following debts:

1.a - \$64,119 charged-off account – This is related to a second mortgage account. (Tr. 60) Applicant is not familiar with either entity referenced in this allegation. Such matters were exclusively handled by his now ex-wife. He is unaware of any relevant facts regarding this debt for the same reasons noted, below, at 1.g. He has searched, but has found no documentation regarding the account among his scant records.

1.b - \$14,255 charged-off account – Applicant admits responsibility for this delinquent debt, which is related to a 60-month duration personal loan he got in November 2014. (Tr. 66) He took the loan in order to pay his divorce attorney while he was unemployed. (Tr. 66) The matter has since been referred for collection and the legal firm continues to refuse to work with him on a repayment plan. (Tr. 67) Some of the materials show a sum slightly different than the one at issue, the result of harmless error in terms of whether the debt remains owed; Applicant disputes these inaccuracies. (Tr. 65-75)

1.c - \$13,227 charged-off account – The account is related to a car loan on which Applicant cosigned in 2013 for his now ex-wife. Unbeknownst to Applicant, the car was ultimately repossessed as the couple's divorce was pending, which explains why the auto was not noted in the final divorce decree. (Tr. 77, 79) After being interviewed by investigators, Applicant tried to contact the lender, but nobody would speak with him. (Tr. 84) However, the account is referenced in his ex-wife's bankruptcy petition for this amount. (GEx. 6; AEx. 2)

1.d - \$16,237 charged-off account – Applicant states that he discussed this account with the lender, who offered to cancel the obligation once it verified Applicant had no income at the time to make payments toward its satisfaction. While there is no record that this is what occurred, there is documentary evidence showing the debt was cancelled in February 2018. (Tr. 85) The related 1099-C tax form was submitted with Applicant's excerpts of his tax materials at the hearing. (Tr. 85-86; AEx. 1)

1.e – 2017 foreclosure – Here, the underlying mortgage was related to an investment rental duplex property purchased during his second marriage in a distant state. His ex-wife exclusively managed this property and the handling of the mortgage. The last payment on this property was made in March 2014, around the time Applicant and his wife separated and while Applicant was still working. It went into foreclosure and was auctioned in November 2014. (Tr. 89) Applicant has no idea what his then-estranged wife was doing with their bills after she moved out at the beginning of their separation. He has no knowledge of what happened to the property or the underlying loan. (Tr. 91)

1.f - \$190 medical collection – Because Applicant uses TRICARE medical insurance, he does not know how this medical collection account came into being or was not disposed of by his insurer. (Tr. 92) He spoke with TRICARE, which had no record of a collection account. (Tr. 92-93) Any sums needed to satisfy TRICARE come from his retirement fund. (Tr. 94) Applicant assumes this credit report entry is an error as he is sure he has no outstanding medical bills. (Tr. 94, 96) He has not disputed the matter with the listed creditor or any of the credit reporting bureaus.

1.g - 2017 Mortgage Foreclosure – This concerns the same property underlying the debt noted above at 1.a. (Tr. 62) Applicant knows little about this property. His wife managed all related payments and bills. Applicant was unemployed at the time when the property went into default and foreclosure. Unbeknownst to Applicant, it went into foreclosure in February 2017. (Tr. 52-53; GEx. 10 at 4) Matters related to this property

were not “within [his] scope of monitoring.” (Tr. 61) In addition, he was locked out of the property in 2015, as noted above, and he does not know what happened after he was forced out of the home. He has never been contacted about this property or its disposition. He has no paperwork regarding the property. (Tr. 51) His wife was undergoing Chapter 13 bankruptcy proceedings at the time. (Tr. 52, 60) Applicant’s only record regarding the properties is a note between two apparent attorneys discussing their accumulation of various records regarding the couple’s marital properties and the car purchased in 2013. (Ex. B)

At present, Applicant earns a gross salary of approximately \$79,000 a year, or about \$6,600 per month. He generates an additional monthly gross of \$1,000 from his military retirement and about \$600 each month in disability payments. Sums owed to him by his last wife under their divorce decree have not been received because he “is still chasing [her] down. . . .” (Tr. 36) He has under \$1,000 in his checking account and an amount over \$8,000 in his savings account. (Tr. 38) The sole credit card he presently maintains is in good standing. (Tr. 96) The present balance mainly represents additional payments to his divorce attorney. (Tr. 97) He does not regularly check his credit report because he prefers to pay cash and he is not anticipating needing credit at this time. (Tr. 95)

Applicant’s monthly rent is between \$1,800 and \$1,900. He owns a 2003 vehicle with over 210,000 miles on the odometer and a 2017 automobile he purchased in 2020 with over 30,000 miles on the odometer. His monthly payment on the 2017 car is about \$425. After all expenses, Applicant has a net monthly remainder of \$1,000. He pays his regular and routine bills on time. Applicant is not a gambler and rarely plays the lottery. He seldom eats out and spends little on meals. (Tr. 46-47) He has received financial counseling. (Tr. 49) He maintains a relatively Spartan existence consistent with his lifestyle when single and in the military. (see, e.g., Tr. 107) Applicant noted, “I don’t spend a lot of money. I don’t make a lot of money.” (Tr. 107)

Applicant stressed that he has never been “bad” with money, noting “my ex-wife was bad with money.” (Tr. 87) He is prepared to file bankruptcy regarding the main accounts noted in the SOR if his ex-wife’s current Chapter 13 bankruptcy action does not satisfy them. (Tr. 106) As he has no contact with his ex-wife and he is unable to find her, he has no sense of whether she is still making timely payments on her bankruptcy plan. (Tr. 106-107)

In closing, Applicant stated:

I worked for the government all my life. . . . And I don’t know what to tell you guys. It’s just . . . it’s sad. . . . But if I say I eat to survive, I eat to survive. I didn’t go on trips because I wanted to go on trips. . . . my bills weren’t able to be paid because I’ve got to keep a roof over my head, one of the questions that you didn’t ask was, during that time that you were unemployed, how much was your rent then? That will take a chunk out of every penny that you have. [For two years while unemployed] I started

teaching kids, 12-year olds . . . every day. On the weekends. That's how I survived. Nothing else got me through it all. [In sum,] I didn't spend a lot. My ex-wife did. I've been trying to get her to court, but I can't seem to locate her. (Tr. 109-110)

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. 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(c), the entire process is a conscientious scrutiny of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person. This includes information that is both favorable and unfavorable.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Finally, these decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that failure or inability 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.

Here, the Government offered documentary evidence reflecting that Applicant has acquired multiple delinquent debts. They include past-due commercial accounts, delinquent mortgages, and a foreclosure. Under these circumstances, two financial considerations disqualifying conditions apply:

AG ¶ 19(a) inability to satisfy debts, and

AG ¶ 19(c) a history of not meeting financial obligations.

One condition could mitigate the finance-related security concerns posed here:

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.

The actual creation of the delinquent debts at issue are at least partly the result of circumstances beyond Applicant's control. A marital separation in early 2014 led to a divorce in mid-2015. His being abruptly locked out of his home for no apparent reason in September 2015 led to his immediate need for an apartment in a costly rental market. He then attempted to reduce this financial burden by relocating to less expensive housing. In mid-2016, Applicant was let go from his job, allegedly for cause, which led to two years of unemployment. During this period, he unsuccessfully looked for regular employment and did some teaching. He was ultimately reinstated in his position with some back-pay restored after a protracted appeal process.

Since that time period, Applicant says he has tried to find his ex-wife, for whom or with whom some of the delinquent debts at issue were jointly incurred. However, there is no documentary evidence to that effect. As a result, there seems to be at least two years of inactivity in addressing his delinquent debts, actively working with his creditors, or contacting the credit reporting agencies to validate the debts at issue or dispute them. Meanwhile, the only progress on Applicant's debt seems to come from a creditor's action to cancel his obligation. Consequently, I find that AG ¶ 20(b) only applies in part.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on a careful consideration of both the administrative guidelines and the whole-person concept.

Applicant is a 60-year-old executive level, executive assistant earning a gross salary of slightly under \$80,000. He has a high school education and attended some college-level courses. Applicant honorably served in the United States military for 21 years, retiring at the rank of E-6. He currently maintains a security clearance. He is the father of one adult child. His second wife divorced him in 2015. This ex-wife then filed for Chapter 13 bankruptcy protection, and has since disappeared. Applicant states that he is trying to find her to resolve financial issues remaining under their divorce decree, but he has thus far been unsuccessful.

Although Applicant testified that he initiated contact with a couple of his creditors to discuss his debts or otherwise address his obligations, he presented no documentation reflecting such efforts. He was unable to find sufficient paperwork regarding his ex-wife's car and the properties which they co-owned. It appears he has not investigated the medical debt at issue or formally disputed it with either the provider or one of the leading credit reporting agencies. Moreover, besides the lack of documentation submitted by Applicant to show genuine effort toward the resolution of his delinquent debt, there is simply no documentary evidence reflecting any progress on his delinquent debts except the 1099-C cancellation of one account obligation.

Furthermore, Applicant showed that he has sufficient net income to make at least minimal strides toward debts resolution either directly or with the help of a debt resolution specialist or financial counselor. To date, there has been no movement in that direction. Rather, Applicant seems focused on waiting for his wife to return, hoping she may have satisfied some of the delinquent debts at issue herself. This process does not require an Applicant to demonstrate that his delinquent debts have all been satisfied. It does, however, expect that one has successfully implemented a genuine, workable, and realistic plan or strategy situation designed to resolve one's delinquent debts. Applicant's approach to his delinquent debt does not rise to this threshold. In light of these considerations, I find financial considerations security concerns remain unmitigated.

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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.g:	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge

