



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



In the matter of:)
)
) ISCR Case No. 20-00996
)
Applicant for Security Clearance)

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: Richard C. Baker, Esq.

06/28/2021

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the security concerns under the financial considerations guideline. He did not meet his burden to mitigate the financial considerations concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 10, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017. Applicant initially responded to the SOR and elected to have his case decided on the written record in lieu of a hearing.

On February 23, 2021, at the request of Applicant, the case was converted to a hearing before an administrative judge. Applicant answered the SOR and the case was assigned to me on April 7, 2021. The Defense Office of Hearings and Appeals (DOHA)

issued a notice of hearing on April 16, 2021, scheduling the hearing for May 20, 2021. The Government offered Exhibits (GE) 1 through 7, which were admitted into the record over the objection of Applicant's counsel. Applicant submitted Exhibits (AE) A through J. Applicant testified in his own behalf and presented one telephonic witness, qualified as an expert. I held the record open until June 10, 2021, and Applicant submitted ten exhibits (AE) K-T, which were admitted into the record. Based on my review of the documentary evidence, I find that Applicant has not mitigated financial considerations security concerns.

Findings of Fact

In response to the SOR, Applicant admitted all allegations with explanations. (Item 3) He is 46 years old. Applicant is married and has two children. After graduation from high school in 1993, Applicant attended college, and he obtained his undergraduate degree in 1998. Applicant completed his most recent security clearance application in May 2019. He has worked for his current employer as a technical analyst since June 2009. (GE 1, Tr. 21) Applicant holds a security clearance.

Financial

The SOR alleges seven delinquent debts, including three past-due mortgage accounts, a past-due auto loan and credit card, and federal and state tax debts. The debts alleged total approximately \$1,034,454.00 (Item 1, Tr. 14) Applicant attributes his financial problems to his wife's job loss from a contract that ended in 2018, and her change in job status which significantly reduced their income from about \$150,000 to about \$37,500. (Tr. 25) He claims that before 2018 he maintained excellent credit and was current on all obligations.

As to SOR ¶ 1.a-a past-due home mortgage account in the amount of \$42,653, with a total loan balance of \$662,482. This is Applicant's primary residence, which he purchased in 2016. (Tr. 28) Applicant obtained a loan modification from his bank and made payments. After the temporary modification, Applicant completed two temporarily reduced payment plans. The lender agreed to a full modification on the loan. The loan is current as of August 2020. Applicant submitted a copy of the loan modification agreement and a current account statement. (AE J)

As to SOR ¶¶ 1.b-1.c, Applicant acknowledges that they are past-due mortgage accounts for investment properties that he purchased in 2008 and 2009. (Tr. 61). For the property listed in 1.b, Applicant states that property became delinquent at the time of his wife's job loss in 2018. It also went into foreclosure. (GE 5) This property was a rental property. (Tr. 30) The mortgage is not current and Applicant now wants to sell the property after he performs minor repairs. He tried to obtain a loan modification, but was not successful. (Tr.32) Applicant's plan was to have the property listed in two weeks. (AE O) He believes the value of the property is \$184,000. (Tr. 33) Due to the pandemic, Applicant could not do anything last year to resolve the issue.

As to SOR 1.c, Applicant admits that the mortgage on the investment property is past due in the amount of \$1,708, with a total loan balance of about \$60,000 not \$85,677. (Tr. 34) This property has been listed for sale. Applicant is also trying to obtain a loan modification. (AE D) The property was listed in May, 2021.

Applicant admits the debt in SOR 1.d for an account that is past due in the amount of \$137, with a car loan balance of \$6,500. He provided a statement showing payments made of \$242 and a loan balance of \$6,954. (AE B, Tr. 38)

As to SOR ¶ 1.e, Applicant admitted that the account was past due in the amount of \$102, with a total loan balance of \$1,485. Applicant provided documentation that as of January 2021, the account balance is zero. (AE C, Tr. 43)

As to SOR ¶ 1.f, taxes owed to the Federal Government in the amount of \$61,968 for tax years 2016 and 2017, Applicant has an installment agreement with the IRS. He pays \$1,300 a month. The balance is currently \$48,755. (Tr. 44, AE F) He also presented a payment history. (GE 2) Applicant finished his installment agreement for the 2015 tax year. (Tr.127)

As to SOR ¶ 1.g, taxes owed to the state in the amount of \$3,500 for tax year 2017, Applicant has an installment agreement with the state, which reflects that he is in good standing as of May 6, 2021. He pays \$114 a month and the balance is \$3,560. (Tr. 46, AE E) However, the first payment is due in June, 2021. (Tr. 69) At the hearing, Applicant stated he will pay the entire tax amount with part of his retirement funds. (Tr. 70) Applicant also had a prior installment agreement with the state.

In Applicant's 2019 subject interview, he affirmed that he owed Federal and state taxes and had installment agreements. (GE2) He also affirmed that he tried to do a short sale for the rental property referenced above. He also stated that he was advised not to pay on the mortgage in order to begin a short sale. His purpose is to get rid of the rental properties and focus on his primary residence. (GE 2) Applicant described his current financial status as fair. (GE 2) He stated that he is willing and able to repay his debts. (GE 2) He was given the opportunity to provide additional documentation after the interview, but he failed to do so.

In February 2021, Applicant obtained the advice of a CPA, who testified by telephone at the hearing. AE R) The witness advised Applicant to begin a monthly budget, sell the rental properties, and sell one of their three vehicles. (AE P) He urged Applicant to maintain an emergency fund of three to six months expenses. Applicant and CPA will have monthly meetings. (Tr. 57) The CPA believed the plan was feasible to resolve Applicant's financial problems. (Tr. 58) However, he did not advise Applicant to withdraw \$40,000 from his retirement account. (Tr. 105)

The CPA witness is licensed and provides financial counseling, litigation support, financial analysis and investigations. (Tr. 85) He testified that he has his own business and had important positions in the military and the government before his current business. (TR. 97) He has qualified as an expert witness in Federal court and was so

deemed an expert witness in this case. (Tr. 90) He reviewed documents, the SOR, and agency exhibits. (Tr. 92) The witness determined that Applicant's net worth should be \$290,272, based on the increased value of his properties. (Tr. 94-96) He also advised they use support groups and community groups for motivation. (Tr. 103)

A financial statement (AE A) shows liabilities of about \$975,000 and a net worth of about \$249,000. Applicant's checking account has about \$3,000. (Tr. 72) He borrowed \$40,000 from his \$103,000 retirement account recently. (AE S) Applicant is now earning \$100,00 a year and his wife is earning \$65,000. (Tr.129) He believes he has a net monthly remainder of \$1,200. (Tr. 129) At the end of the hearing Applicant, stated that he had tax issues as far back as 2012, because his wife had her own company. (Tr.138)

Applicant submitted letters of recommendation from two colleagues who both affirm that Applicant is a consummate professional and a true expert in his field. He is an invaluable and irreplaceable member of the team. (AE H)

Another colleague, who has known Applicant for over ten years recommends him for his security clearance. Applicant has never spoken about details of any sensitive information according to this reference. He is discreet and is an upstanding citizen and an active member of his community. The declarant has no doubts about his integrity. (AE I)

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 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(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."

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 Exec. Or. 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* Exec. Or. 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 record and his credit reports, establish three disqualifying conditions under this guideline: AG ¶¶ 19(a) (“inability to satisfy debts”), 19(c) (“a history of not meeting financial obligations”) and 19 (g) (“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 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;

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

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to pay the amount owed and is in compliance with those arrangements.

Applicant admitted the allegations and attributed his current situation to the loss of his wife's employment in 2018. However, he had some tax issues as far back as 2012. He has two home mortgages on investment properties that are not resolved, although he has stated his plan to sell the properties. One property is not even on the market currently. He also has a plan to sell a third vehicle, but it is a plan not a resolution at this time. He has been employed earning a good salary despite the loss of his wife's income. He recently took money (\$40,000) from his retirement account to bolster his cash flow. AG ¶ 20(a) is not applicable because in the past, he has not been able to pay his bills when due. This situation could recur.

Applicant did have a circumstance beyond his control in 2018, but he only recently began to address the various financial issues. He had financial issues before that time. AG ¶ 20(b) partially applies, but he did not act responsibly under the circumstances.

Applicant' did not obtain counseling or financial advice until this year. The CPA presented an action plan which Applicant agrees to follow, but the plans are in effect promises to pay in the future. Applicant has resolved some debts, and it is not required

that all debts be paid, but the significant amount of money that he owes puts him in a precarious position. There are not clear indications that the problem is under control at this point in time. AG ¶ 20 (c) partially applies.

AG ¶ 20(d) partially applies. He brought his primary residence home mortgage loan to a current status. He paid another account. He does not have a clear track record of being consistent with payments. It is impossible to conclude he made sufficient good-faith effort to resolve his debts or that his financial situation is under control.

AG ¶ 20(g) applies because Applicant has installment plans with the Federal and state tax authorities to pay his taxes and is in compliance with the arrangements.

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.

Applicant has been employed with his current employer since 2009. He recently obtained financial counseling this year. He received advice from his CPA, which he intends to follow. He is in compliance with his tax installment plans for Federal and state taxes. His wife lost employment in 2018, and that impacted his finances. He has a net worth of \$249,000. However, he has a significant amount of debt that he has not resolved. He has a plan, but it is not yet in place. He has excellent references. He is in a place of rehabilitation, but this is not sufficient for mitigation at this point in time.

Overall, the record evidence leaves me with some questions and doubts as to Applicant's eligibility for a security clearance. Because protection of the interests of

national security is the principal focus of these adjudications, any remaining doubts must be resolved by denying eligibility for access to sensitive information.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-c-d:	Against Applicant
Subparagraphs 1.e-g:	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's eligibility for a security clearance. Continued eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge