



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



In the matter of:)
)
) ISCR Case No. 20-01656
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: William H. Henderson, Personal Representative

11/24/2021

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 October 27, 2020, in accordance with Department of Defense (DOD) Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. 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 responded to the SOR and elected to have his case decided on the written record, in lieu of a hearing. At his request, he received an extension of time to respond to the FORM until July 26, 2021.

Department Counsel submitted the Government’s file of relevant material (FORM) on February 26, 2021. Applicant received the FORM, responded to the FORM, objected to Government Items 5, 6, and 7, and provided another written answer and documents. The Government replied to Applicant’s objections. (Appendix C) The Government’s

evidence, included in the FORM and identified as Items 1 through 10, were admitted with the exception of Item 5, which was withdrawn. The case was assigned to me on October 10, 2021. Based on my review of the documentary evidence, I find that Applicant has not mitigated financial consideration security concerns.

Procedural Issue

Applicant's objection to the report of subject interview (Item 5) was sustained and withdrawn by the Government. His objection to FORM Items 6 and 7, both credit reports, were overruled by me as this is settled Appeal law that the Directive prescribes a broad evidentiary parameter "to permit the development of a full and complete record" in DOHA hearings, allows for technical rules of evidence to be relaxed, except as otherwise provided in the Directive. There is no requirement under the Directive, Executive Order 10865, or DOHA case law that all evidence must be obtained by an investigator as part of a security clearance investigation. The Appeal Board has routinely upheld the admission of evidence obtained after the investigation, including credit reports, under Paragraph 20. There is no harm or prejudice to an applicant simply because evidence is obtained by someone other than a security clearance investigator. (See Reply by Government to Applicant's objections.) Appendix C

Government Items 2 through 10, and Appendix C are entered into the record. Government Item 5, as stated is withdrawn. Applicant's exhibits AE A through U are entered into the record (105 pages). His response to the FORM, including three more exhibits are entered into the record as AE V.

Findings of Fact

In response to the SOR, Applicant admitted SOR allegations ¶¶ 1.a, 1.b, 1.c, 1.d, 1.f, 1.h, and denied ¶¶ 1.e and 1.g with explanations. (Answer, Item 3) Applicant, age 46, is not married and has one minor son. (Item 1) He obtained his undergraduate degree in 1998, his real estate license in 2004, and his master's degree in 2004. He is the owner of two private businesses, a consulting company from 2010 and a real estate company from April, 2021. (AE M, N) Applicant completed his security clearance application on August 5, 2018. (Item 4) He has held a security clearance since 2008. (Item 1) He has been with his current employer since July 2018. (Item 4)

FINANCIAL

The SOR alleges that Applicant has delinquent debt totaling \$98,636, including four consumer accounts, two medical accounts, and a significant past-due child support arrearage. (Item 6) The SOR further alleged that Applicant failed to file his 2017 Federal income tax return. (Item 1)

Applicant admitted the majority of the allegations, but he denied the two medical debts on the basis that he did not recognize them. He attributes the delinquent debts to a period of unemployment, from March to December 2017. In addition, a contractor was

stealing from his real estate business, resulting in significant unplanned costs. (Items 3 and 4) He also cited several additional circumstances that negatively impacted his finances, including incurring legal expenses related to a child custody dispute and travel costs between states to visit his son. He claims that he began addressing his debts shortly after he regained employment in December 2017 and now, three years later he has resolved all but his child support arrearage. (Item 3) He is a poor historian of his financial history due to several inconsistencies in his answer to the SOR and his response to FORM.

As to the issue of unemployment, he disputes the information written in the FORM that he voluntarily left his job in March 2017. (Item 4, AE V) Applicant's response to the form stated that he inaccurately listed his reason for leaving his employment in his August 15, 2018, SF86. He now states that he was an employee from 2013 until February 2017, not a contractor. He states that the understanding was for him to work from home and visit work sites in various states for four days a week. He stated that when the contract ended, this arrangement was no longer possible. He did not want to move from his home state. So, he declined the position and offered he was terminated. He declared there was no severance package. (Response to FORM, (AE V)

However, he was not without any income and financial resources. He disclosed that he started his own company and had real estate interests as early as 2013. At the time, he owned sixteen properties. Applicant stated that he had some losses and in January 2017, he invested \$100,000 in an apartment complex. He stated that there was theft of property by the management company, but provided no proof. He admits that initially he focused on paying the mortgages and other expenses on his rental properties. Applicant also had consistent work as a contract employee. He has been employed on a full-time basis since December 2017. He took trips abroad for tourism from 2011-2017. (Item 4)

In his answer to the FORM, Applicant stated that he began paying delinquent debts as early as January 2019 with a \$37,581 payment to have his mortgage reinstated and a payment of \$1,236 in April 2019, to pay another account. He did not address his child support arrears. (AE V)

As to SOR allegation ¶ 1.a, an account that is past-due for child support arrears in the approximate amount of \$43,235, Applicant admitted the allegation, but claimed that he was unable to provide child support from September 2017 to April 2019 due to financial losses and insufficient income. He provided proof that he paid from February 2006, usually in the amount of \$1,000, until September 24, 2019. However, some of the amounts were much less. (AE A) The child custody issue is contentious. (Item 9) Applicant provided various court orders, including a temporary one, granting him custody in 2019 and allowing him to stop child support. (AE B, C) In 2017, after he was unemployed, he was ordered by a court to resume child- support payments and pay \$12,000 in child support arrears for a seven-month period (October 2016 to April 2017). He stated that he was unable to continue paying the arrearages due to insufficient income. The mother of the child was ordered to pay some support but Applicant claims she has not. (AE D) Applicant is now awaiting a final order awarding him full custody. However,

he was confirmed in arrears in 2020 in a court order in the amount of \$44,261, with interest. He projects that he will pay \$700 a month and the arrearage will be reduced to \$32,000. Applicant at one point stated that his attorney advised him to stop child support payments. He submitted a draft, unsigned order. (AE E). The support arrearage at this time is unresolved. (Item 3)

As to SOR ¶ 1.b the SOR alleged that Applicant is indebted for a charged-off credit card in the approximate amount of \$22,155. The card was charged off in June 2019. (Item 6, 7) Applicant contacted the collection agency on or about October 27, 2020, and arranged to settle the debt for \$10,000, which was paid on November 2, 2020. (AE F) In his answer to the SOR, he presented a power of attorney document limited to credit counseling. However, there is nothing in the record to show that he received financial counseling.

As to SOR ¶ 1.c, the SOR alleged that Applicant was indebted for a collection account in the approximate account of \$11,515. The debt was for a 2017 car loan. (Item 6) He stated that the new car had constant repairs since he purchased it and it required more in April 2018. (AE G) After negotiation, he voluntarily surrendered the car and it was sold at auction. There was a deficiency balance of \$11,515. Applicant settled the debt in November 2020 for an unknown amount. (AE H)

As to SOR ¶ 1.d, the SOR alleged that Applicant had an account placed in collection in 2018 in the approximate amount of \$9,657. He explained it was a credit card used for real estate repairs. He could not pay after his unemployment. A default judgment was obtained against him in 2020 for \$9,657. (Item 10) He settled the debt for an unknown amount in September 2020. (Item 3, AE I)

As to SOR ¶ 1.e, the SOR alleged that Applicant is indebted to a creditor identified as a medical account on his credit report, date April 7, 2020, Applicant denied this debt because he was not familiar with or liable for the account. He engaged a financial services firm and was advised to contact the creditor to validate the debt. He claims he called the creditor and the debt was not validated. It was removed from his credit report. He has no documentation for this claim.

As to SOR ¶ 1.f, the SOR alleged that Applicant is indebted to a charged-off account in the amount of \$5,449, which was a credit card used for real estate repairs which became delinquent in 2018 and was charged off in March 2019. (Item 8) Applicant contacted the agency in October 2020 and settled the debt for \$2,179.98. It was paid on November 3, 2020. (Item 3, AEJ)

As to SOR ¶ 1.g, Applicant was indebted to a creditor identified as a medical account, dated April 2020, in the approximate amount of \$109. Applicant denied this allegation. He claims that there was one credit report that had the account listed, but no identifying information for the original creditor. He has been unable to discover any other information about this alleged debt. (Answer to SOR)

As to SOR ¶ 1.h, the SOR alleged that Applicant failed to file, as required, Federal income tax returns for at least tax year 2017. Applicant admitted and denied this allegation. He failed to file his 2017 federal tax return because of complicated business losses, his poor bookkeeping and negligence to file. It was filed in February 2020. (Item 3) The filing occurred long after his security clearance process began. It also appears that Applicant carries an outstanding Federal tax balance for prior years. (Item 3)

Applicant explained that normally his CPA completes his tax return, but in 2017, Applicant decided to do the bookkeeping. He noted that he did a poor job. His CPA needed an extension to file the 2017 federal income tax return because Applicant failed to provide the CPA with the required forms and documentation. The tax return was filed in February 2020. (Item 3, AE K) Ultimately, he claimed he was owed a refund.

Applicant completed a personal financial statement on December 18, 2020. He reports a net monthly income of \$22,146 and other income from his realty company of \$6,822. (AE O) His monthly expenses are \$7,650. His debts include the child support arrears with his actual monthly amount listed as zero. He is paying other mortgages. His monthly net remainder is \$10,899. Applicant lists his total assets as \$2,190,000.

Applicant presented letters of recommendation from college friends, colleagues, and a member of a board of trustees for child protection. Some of the references have known Applicant for more than 20 years. Each letter attests to his diligence, ethics, integrity, and diligence in his professional and personal life. (AE P-U)

Applicant settled the SOR debts, with the exception of the child-support arrears, in 2020, after the SOR was issued. The delinquent accounts were from 2018 and 2019. He changed some of his responses after the FORM was issued in February 2021.

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 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;

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 (f): failure to file or fraudulently file annual Federal, state, or local income tax returns or failure to pay

Applicant's financial issues began in 2017 when a contract ended and he was unemployed for nine months. He initially stated in his SF-86 that he received a severance package, but denied that in his response to the FORM. He presented inconsistent answers as to the ending of his job in 2017. This casts doubts on his trustworthiness and whether he acted responsibly in addressing his delinquent debts. The other issue is one of not filing a federal tax returns for 2017 and not providing his CPA the necessary documents to file. AG ¶ 20(a) and 20(b) are not established. Applicant's child-support arrearages remain unresolved and he is relying on a court order that has not yet been signed. He chose to pay other delinquent accounts or settle others. He also stated that his attorney advised him not to pay despite a court order.

AG ¶ 20(c) and 20(d) are not established. Applicant did not provide proof that he received financial counseling. The record does not support good-faith efforts to repay creditors. He waited and decided to settle. This is a legitimate way to pay, but he waited until after the security clearance process began to begin resolving his delinquent debts.

His child support is unresolved even though Applicant can clearly afford to pay the arrearages.

AG ¶ 20(f). Applicant admitted that he failed to file his 2017 federal income tax return in a timely manner. He failed to provide the documents to his CPA.

Applicant failed to meet his burden to mitigate the financial concerns set out in the SOR, despite the fact that he has settled four of the delinquent accounts and settled \$44,276 of his delinquent debt. As of the close of the record, he owed child-support arrearages of over \$44,000 and was not making payments towards the arrears. For these reasons, I find SOR ¶¶ 1.a through h. 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 commonsense 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, I conclude that Applicant has not carried his burden. He has held a security clearance since 2008 and presented excellent references. He has not addressed his child support arrearages. This creates great doubt on his judgment as he had a court order confirming his arrearages. 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.h:

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