



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-00665
)
Applicant for Security Clearance)

Appearances

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

01/18/2022

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns involving his failure to file federal and state income tax returns for tax year 2014 and delinquent consumer debts. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On June 12, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under 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 elected, in his undated response to the SOR (Item 2), to have his case decided on the written record in lieu of a hearing. The Government submitted its written

case on November 24, 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 Government's FORM on January 4, 2021. He did not respond to the Government's FORM. The case was assigned to me on March 12, 2021. The Government's documents identified as Items 1 through 6 are admitted in evidence without objection.

Findings of Fact

Applicant denied all of the SOR allegations in his Answer. He is 47 years old, unmarried, and has two minor children. As of his April 2019 security clearance application (SCA), he owned a home since 2010. (Items 2, 3, 6)

Applicant graduated from high school in 1993. He earned an associate degree in 2002 and a bachelor's degree in 2005. He served in the U.S. military from 1996 to 1999 and 2005 to 2009, and was honorably discharged on both occasions. He was unemployed from July 2009 to February 2010. He then worked for a previous DOD contractor from March 2010 to September 2015, when he was laid off after a contract concluded. He was unemployed until March 2016. He began working as a systems engineer for his employer, another DOD contractor, as of the date of his 2019 SCA. He was first granted a security clearance in 2005. (Items 3, 6)

The SOR alleged that Applicant failed to file his federal and state income tax returns for tax year 2014, as required (SOR ¶¶ 1.a - 1.b). It also alleged that he has ten delinquent consumer debts totaling \$73,386 (SOR ¶¶ 1.c - 1.l). In his Answer, Applicant denied all of the SOR debts. He claimed, without providing any corroborating documents, that the debt in SOR ¶ 1.j is an error and has never existed; the debt in SOR ¶ 1.k is a duplicate of SOR ¶ 1.h; and the debt in SOR ¶ 1.l was a billing error incorrectly sent to a collection agency and has been resolved. He disclosed and discussed his failure to file his 2014 federal and state income tax returns and his delinquent indebtedness to multiple creditors in the amount of approximately \$60,000 on his 2019 SCA and during his 2019 background interview. The debts in SOR ¶¶ 1.c to 1.j are listed on his 2019 and 2020 credit bureau reports, and the debt in SOR ¶ 1.l is listed on his 2019 credit bureau report. Both credit reports establish that the debt in SOR ¶ 1.k is a duplicate of the debt in SOR ¶ 1.h. (Items 1-6)

Applicant attributed his failure to file his 2014 federal and state income tax returns and his delinquent debts to a six-month period of unemployment beginning in September 2015, the unplanned birth of his child in 2016, "another child on the way" as of his background interview, and associated child-care expenses. Although he received state unemployment benefits during this period of unemployment, it was "just enough to pay for basic necessities." (Items 2, 3, 6)

Applicant stated during his background interview that the debts in SOR ¶¶ 1.c, 1.e, 1.f, 1.g, 1.h, 1.i, and 1.l are credit cards, and the debts in SOR ¶¶ 1.d and 1.j are

loans. He stated that he paid SOR ¶ 1.i, was paying SOR ¶ 1.j at \$56 monthly, and made some payments towards the debts in SOR ¶¶ 1.d and 1.e. He failed to provide corroborating documentation. He further stated during his background interview that his current financial status “sucks,” and he was unable to repay his debts because he had another child on the way and would then have two children requiring daycare. He considered filing bankruptcy. He had not received any financial counseling or engaged any debt consolidation services. (Item 6)

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. Instead, 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(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 access to classified information 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.

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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 10865 provides that 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

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. AG ¶ 19(a), an “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” apply. Applicant failed to file his 2014 federal and state income tax return, and he was unable to pay his consumer debts.

I have considered all of the mitigating conditions under AG ¶ 20 and find the following relevant:

(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;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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.

The credit reports corroborate Applicant's claim that the debt in SOR ¶ 1.k is a duplicate of the debt in SOR ¶ 1.h. AG ¶ 20(e) is established as to SOR ¶ 1.k, and I find SOR ¶ 1.k in Applicant's favor.

Conditions beyond Applicant's control contributed to Applicant's financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under his circumstances. Applicant has not demonstrated that he has taken any steps toward filing his 2014 federal and state income tax return. He did not provide sufficient proof of any efforts he made to resolve his remaining delinquent consumer debts. He has not received any financial counseling. I find that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are not established.

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 the 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. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated 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.j, 1.l:	Against Applicant
Subparagraph 1.k:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge