



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



In the matter of:)
)
) ISCR Case No. 20-03114
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

02/14/2022

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On January 12, 2021, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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) effective on June 8, 2017.

Applicant answered the SOR on February 23, 2021, and he requested a hearing. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 27, 2021, and the hearing was convened as scheduled on November 18, 2021. The Government offered exhibits (GE) 1-7, which were admitted into evidence without objection. The Government's exhibit list was identified as HE I. Applicant testified but

did not offer any documents except for the attachments to his SOR answer, which will be considered as part of the answer. The record remained open until December 31, 2021, to allow Applicant to submit additional documentary evidence. He submitted AE A-D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 1, 2021.

Findings of Fact

In his SOR answer, Applicant admitted all the allegations. His admissions are adopted as a findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 40-year-old employee of a defense contractor. He began working at his present job in April 2016. He served in the U.S. Air Force and the Air National Guard for approximately six years. He received an honorable discharge. He holds a bachelor's degree. He was married from 2010 to 2016. He has three minor children, for whom he pays child support. He has never missed a payment, even though it has caused him to miss some of his other financial obligations. (Tr. 6, 18-19, 23-24, 34, 36; GE 1)

The SOR alleged Applicant failed to file his 2011 state income tax return and that a state tax lien was entered against him in 2016 for \$5,201. The SOR also alleged five collection accounts and two charged-off debts (student loans, an automobile repossession, and consumer debts) totaling approximately \$73,780. The debts are established by credit reports from June 2018, August 2019, and April 2021, and November 2021; Appellant's SOR admissions; and his hearing testimony. (SOR ¶¶ 1.a – 1.i). (Tr. 19; GE 4-7)

Applicant explained that his financial troubles began when he got divorced and he was required to pay spousal and child support that essentially amounted to half of his pay check. The spousal support ended in February 2021, but his child-support payments continued at \$1,800 per month. In July 2021, his ex-wife agreed to accept \$500 monthly child support in exchange for Applicant having custody of the children every weekend. His daughter also has special needs. Applicant provided documentation showing that he has made four payments of \$300 toward his state tax debt. Those payments were all after the SOR was issued (August 2021, October 2021, November 2021, and December 2021). He claims he filed his 2011 state tax return, but provided no documentation to corroborate his assertion. (Tr. 19-20, 27; AE D)

Applicant has not made payments toward any of the remaining debts, nor has he set up any types of plans to address the debts. He contacted a credit-repair company, but the company has not addressed any of his delinquent debts. His student loan debts were acquired before he enlisted in the Air Force and have been delinquent since August 2019. (Tr. 27, 29, 31, 33, 35; AE B)

Applicant also admitted in his testimony that he has not filed his state income tax returns "in the last few years" and that he failed to file his federal tax returns for 2018,

2019, and 2020. I will not consider this information for disqualification purposes, but I may consider it to determine credibility, the applicability of mitigating conditions, and during my whole-person analysis. Applicant's current yearly gross income is approximately \$88,000. (Tr. 29-30, 33)

Applicant supplied a letter from a coworker, who wrote that Applicant is a good man and good father. (AE C)

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 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.

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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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* EO 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 for 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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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 accumulated numerous delinquent debts, which remain unpaid or unresolved. He also failed to file his 2011 state income tax return or pay the taxes owed. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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; and

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

(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's debts are recent and, although he communicated with a company to repair his credit, he offered no proof that he paid or resolved his debts, other than making four post-SOR payments toward his state tax debt. He failed to produce evidence showing that recurrence of his financial problems is unlikely. AG ¶ 20(a) is not applicable.

While his divorce was a condition beyond his control and he has acted responsibly by making his child support payments, he has not acted responsibly in ignoring his remaining debts. AG ¶ 20(b) is partially applicable.

Aside from his contact with a credit-repair company, Applicant did not present evidence of financial counseling. He failed to establish good-faith efforts to resolve his debts. Given the unpaid status of his debts, Applicant's financial problems are not under control. AG ¶¶ 20(c) and AG 20(d) do not apply. Appellant only receives partial credit for his state tax payments because he did not start until after the SOR was issued. AG ¶ 20(g) has some application.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military and federal contractor service and the circumstances surrounding his indebtedness. However, I also considered that he has made insufficient and untimely efforts to resolve his debts. Additionally, he admitted not filing his federal and state tax returns for the last several years. He has not established a meaningful track record of financial responsibility, which causes me to question his ability to resolve his debts.

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 Applicant has not mitigated the financial considerations security concerns. (I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.)

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.i:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge