



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



Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

03/09/2022

Decision

Dorsey, Benjamin R., Administrative Judge:

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

Statement of the Case

On May 28, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on September 21, 2021. 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 FORM on November 24, 2021. As of December 27, 2021, he had not responded. The case was assigned to me on February 9, 2022. The Government exhibits included in the FORM are admitted in evidence. Applicant did not attach any documents to his response to the SOR.

Findings of Fact

Applicant is a 61-year-old employee of a defense contractor for whom he has worked since November 2019. He has an associate's degree, which he earned in 1985. He has been divorced twice, most recently in June 2017. He has been residing with a cohabitant since September 2018. He has three children, two of whom are adults. (Items 2, 3)

The SOR alleges Applicant owes two delinquent state tax debts totaling about \$28,000 (SOR ¶¶ 1.a and 1.b). Applicant admitted both of these tax debts in his response to the SOR. I find that the SOR allegations are established through Applicant's admissions and the Government exhibits. (Items 1-4)

Applicant attributed his financial problems to his unemployment, underemployment, poor money management, divorces, his most recent ex-spouse's failure to file and pay taxes while he was traveling for work, and not paying attention to his finances. He was unemployed for a period from about February 2015 to April 2015, April 2017 to November 2017, and November 2018 to March 2019. He divorced his first spouse in 1995 and his second spouse in 2017. Applicant stated that he has hired a professional tax service to assist him with resolving his delinquent state tax debt. (Items 1-3)

The \$16,695 state tax debt alleged in SOR ¶ 1.a has not been resolved. In his response to the SOR, Applicant admitted this debt, and stated that he is working on making payment arrangements with the state taxing authority. He asserted that he has made payment arrangements on this debt in the past, but not since 2019. He did not provide any documentation corroborating his attempts at making payment arrangements or documentation of payments made. (Items 1-3)

The \$12,014 state tax debt alleged in SOR ¶ 1.b has not been resolved. In his response to the SOR, Applicant admitted this debt, and stated that he is working on making payment arrangements with the state taxing authority. He asserted that he made payment arrangements on this debt in the past, but not since 2019. He did not provide any documentation corroborating his attempts at making payment arrangements or documentation of payments made. (Items 1-3)

There are several debts Applicant listed in his December 2019 Questionnaire for National Security Positions (SF 86) and discussed during his January 2020 subject interview that are not listed in the SOR.¹ Applicant had significant federal tax debt caused by "poor money management." He stated that he paid off this federal tax debt by borrowing money from his mother. There are Internal Revenue Service (IRS) account transcripts showing that at least some of these federal tax debts have been paid through a satisfied offer in compromise. He also had several significant delinquent credit card debts that have been charged off; for some of which he has received 1099-C forms. (Items 2-4)

¹ I will not consider Applicant's delinquent debt not listed in the SOR under the disqualifying factors, but I will consider it when applying matters of extenuation and mitigation, and for the whole person analysis.

Applicant stated that he intends to pay the debts in the SOR. He did not respond to the FORM, so more recent information about his finances is not available.

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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(c), 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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (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 has a history of failing to pay his state income taxes. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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; 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.

Applicant's aforementioned divorces, unemployment, and underemployment were beyond his control. Applicant's poor money management, lack of awareness of his finances, and reliance upon his ex-spouse to file and pay his state taxes were within his control.

With respect to the SOR debts, there is no documentary evidence of payments to or payment arrangements with the relevant state taxing authority. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). Applicant stated that he intends to pay the SOR debts. However, intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period of time. He has owed the SOR debts for about a decade. Despite having hired a tax consultant, there is insufficient evidence that he is resolving his delinquent state tax debt. Without corroborating documentation detailing his efforts to make payment arrangements or payments with his state taxing authority, I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. While he ultimately paid off at least some of his delinquent federal taxes, he failed to pay several other significant charged-off debts that were not listed in the SOR. His financial issues are ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. Financial considerations security concerns are not mitigated.

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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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.b: Against Applicant

Conclusion

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.

Benjamin R. Dorsey
Administrative Judge