



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



In the matter of:)
)
) ISCR Case No. 20-03547
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

03/29/2022

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 January 22, 2020, in accordance with DoD Directive 5220.6, as amended (Directive), and Administrative Guidelines (AG) implemented on June 8, 2017, the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on January 6, 2022. The Defense Office of Administrative Hearings (DOHA) issued a notice of hearing on February 4, 2022, scheduling the hearing for February 22, 2022. The Government offered Exhibits (GE) 1 through 5, which were admitted into the record without objection. Applicant testified in his own behalf and presented 3 documents, which were marked AE A through AE C, and admitted into the record without objection. The transcript was received on March 1, 2022.

I reopened the record for a telephone conference on March 17, 2022 to allow Applicant time to submit any additional evidence that he referred to during the hearing (bank statement) and to further address the failure to file his federal tax returns, as required by law, for tax years 2017 and 2018. Applicant submitted AE D.

Procedural Matter

Department Counsel made a motion to amend the SOR at the end of the hearing to conform to the evidence in the case. Applicant, when questioned, admitted that he did not file his federal tax returns for tax years 2017 and 2018 as required by law. The SOR was amended to add SOR 1.m. Applicant had no objections.

Findings of Fact

Applicant, age 55, has been legally married to his husband since 2015. (Tr. 17). Applicant completed his security clearance application on January 16, 2020. He obtained his undergraduate degree in 2006. Applicant served in the U.S. Navy from 1985 until January 2007, receiving an honorable discharge. He obtained his first security clearance at that time. He has been with his current employer since 2018. (GE 1, 2) He has been employed in the contracting field for many years, but he was unemployed for a few months in 2016. (GE 1) Applicant is a federal records manager. (Tr. 18)

The SOR alleges that Applicant has delinquent debts in the amount of \$92,062, including collection accounts and charged-off accounts. Applicant admitted the SOR allegations and provided explanations. SOR allegation 1.m was amended to conform to the evidence reflecting Applicant admitted that he did not file his Federal tax returns for 2017 and 2018, but he believes he paid them. (Tr. 53) He has filed his 2020 and 2021 returns. He does not know if he owes tax for the years that he did not file. (Tr. 54)

Applicant acknowledged his delinquent debts, but stated that until 2017, his credit rating was above average and he was paying all bills. He was part of a two-income, two-person family and met all financial obligations. His income at that time was about \$12,000 to \$14,000. Applicant lost a contract unexpectedly and suffered a loss of substantial wages. (Tr. 11) He found a position which lasted two years. Applicant took another position which reduced his salary by two-thirds. He took the job so that he could pay household bills, food, and lodging. (Tr.11) The income was not sufficient, so he took out loans and used credit cards.

Over the past three years, Applicant has worked aggressively to remedy the financial situation. He took three jobs so that he could increase his income and make payments on accounts. He obtained a loan consolidation on June 11, 2021, so that he could pay the bill listed on the SOR. (AE B) His husband has not worked since 2015, and he still cannot work, as he is partially disabled and retired. (Tr.13, 44) They live apart as his husband is in a retirement home in one state and Applicant is in another state. Applicant visits his husband about once a month due to rising costs in gas.

Applicant contacted the creditors and tried to negotiate with small payments, but no one was interested. The creditors wanted the entire sum or they would turn the account to collection. (Tr. 24) He understands it is his responsibility to pay the bills and thus has the three jobs. Applicant presented information on the jobs from 2018 to 2022, including wage slips. (AE B)

Applicant owns two residential properties which he purchased in 2007. The mortgage is solely in his name, but the properties are in both names. He believes the value of the two properties is about \$500,000. (Tr. 20) His husband lives in the retirement property in another state. He is retired and unable to get a job due to a partial disability, but he is now beginning to pay some bills due to social security. (Tr. 13)

Applicant noted that he has had two renters in his home for the past three years. They help pay for the rent. However, one had been homeless and gives whatever he can to help with the rent. (Tr. 21) One renter pays about \$460 a month, and the other person now pays about \$250 a month. (Tr. 50) However, one is on disability and sometimes pays what he can. (Tr. 27) He also stated that the one renter has a child with another on the way. He treats the renters like family and plans on helping the one who is soon to have a baby. Applicant purchased a vehicle to help transport the child. (Tr. 50) Applicant is current on the mortgages and his two car payments. He currently has no collection accounts on his latest credit report. (AE C, Tr. 27) He helps the two renters financially because he is a generous man. He also pays for their cell phones. (Tr.51)

At some point Applicant obtained a loan for about \$50,000 to pay the majority of his debt. (AE C) He acknowledged that this was after notice of the SOR. (Tr.44) He made payments on the majority of the SOR debts, his mortgage, and car payments for the last nine months. (Tr. 26) Applicant presented a chart (AE A) that outlined the SOR accounts and the amount that he paid or settled for each account listed on the SOR and the date of the payment. However, he did not submit any evidence of bank statements that he actually made the payments. He currently has no collections on his credit line. (Tr. 27, GE 3)

As to SOR allegation 1.a, (\$3,509) a collection account, he submitted his credit union statement that showed he withdrew on June 16, 2021, an amount of to MCM. As to SOR allegation 1.b, a collection account for \$824, he settled this debt for \$464. As for SOR 1.c a collection account for \$12,949, he settled the debt for \$10,359. As for SOR 1.d, a charged-off account for \$4,440, Applicant settled for \$2,519. As for SOR 1.e, a charged-off account for \$5,599, Applicant settled for \$2,242. As for SOR 1.f, a collection account for \$9,702, there is no record of payment from his bank. (GE 3, AE D Tr.38) In his answer to the SOR, Applicant stated that he settled the account in June 2021.

As for SOR 1.g, a charged-off account in the amount of \$17,600, he stated that he settled the account for \$8,494. His credit report states that he is paying on a partial payment agreement. (GE 3) He stated at the hearing that it was settled for \$8,494. (Tr. 39) There was no record of the payment.

As for SOR 1.h, another charged-off account to the same credit union. Applicant stated that he is working with the credit union, but provided no details. The credit report reflects that the last payment was on May 2021.

As to SOR 1.i, a charged-off account for \$7,691, Applicant has settled the account for \$3,077. (GE 3)

As to SOR 1.j, a collection account in the amount of \$1,040, Applicant settled the debt for \$831.71. (AE D, GE 3)

As to SOR 1.k, a charged-off account in the amount of \$1,718, Applicant settled the account, and there is nothing past due. (GE 3)

As to SOR 1.l a charged-off account in the amount of \$6,927, the debt was paid for less than the full balance. (GE 3, Tr. 41)

The amended SOR allegation 1.m reflects the fact that Applicant, when questioned, admitted immediately that he has not filed his federal income tax returns for 2017 and 2018. (Tr. 53) He has filed his 2019 and 2020 tax returns. He has no idea what he owes for the tax years 2017 and 2018. He stated that he is talking to the IRS, but when given another opportunity during the teleconference after the hearing was reopened, he had no explanation or documentation for what he owes. As of the date of the post hearing conference, the 2017 and 2018 tax returns were not filed.

Applicant currently earns \$63.00 an hour at his major job. He follows a budget. He helps his husband financially, but Applicant does not have disposable income. (Tr.45) Applicant has started a retirement account with about \$8,000 in the account. He has \$1,200 in his savings account. (Tr. 46) When he works his part-time job, he can earn about \$500 extra each week. However, his income before the crisis (2009-2010), when he was working as an independent contractor, was \$10,000 to \$12,000 a month. (Tr. 47)

Applicant explained that he only spends money on his car, food, maintenance, housing expenses and his pets. He takes no vacations or days off. (Tr.48) He had to live using credit cards for a time of more than two months when the contract ended. He did not seek financial counseling. His credit report for July 2021 shows that almost all accounts have zero past due. (GE 3)

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 fraudulently filing annual Federal, state or local income tax returns 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(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 delinquent debts are the result of losing a contract and a period of unemployment and lowered pay. He tried to keep his household bills paid for himself and his husband, but at some point he had to use credit cards. He also helps renters who were homeless. He was fine financially until 2017. His credit reports reflect that issue. He took a loan after the issuance of the SOR to pay off the credit card debts. He has paid or

settled the majority of them. He admitted that he “put his head in the sand”. He has made great strides toward his debts and is working with two credit unions to resolve two debts.

However, Applicant has not filed his Federal income tax returns for 2017 and 2018. He gave no explanation and was even given an opportunity to present documentation to mitigate. He did not have anything to submit. He admitted immediately that he has not filed the returns as of yet. He stated that he became overwhelmed and accepts responsibility.

With regard to his financial obligations and debts he is entitled to mitigation credit. However, his failure to file his Federal income taxes for two years has not been mitigated. Although candor at the hearing was established. AG ¶¶ 20(a)-20(d) are established. Applicant did not meet his burden to mitigate the financial concerns set out in the SOR 1.m for not filing his taxes for two years. For these reasons, I find SOR ¶¶ 1 a through 1.l. for Applicant. However, SOR 1.m has not been mitigated.

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 common sense 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 and evaluating all the evidence in the context of the whole person, including Applicant's military career and his candor and resolve to pay his debts. I find that financial consideration concerns are not mitigated. Applicant has not presented sufficient information to mitigate the security concerns raised by his failure to file his federal income taxes for two years. Any doubts must be resolved in favor of the Government. I conclude that it is not consistent with the national interest to grant 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.l:

FOR APPLICANT

Subparagraph 1. m:

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