



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 21-00818
)
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*

04/27/2022

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 September 21, 2021, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

On December 13, 2021, Applicant answered the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s File of Relevant Material on January 31, 2022. The evidence included

in the FORM is identified as Items 3-6 (Items 1-2 include pleadings and transmittal information). The FORM was received by Applicant on February 11, 2022. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not file objections to the Government's evidence, nor submit any evidence in support of his position. Items 3-6 are admitted into evidence without objections. The case was assigned to me on April 12, 2022.

Findings of Fact

Applicant admitted some of the SOR allegations (¶¶ 1.a, 1.c) and denied others (¶¶ 1.b, 1.d-1.f). His admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 37 years old. He has worked for a defense contractor since February 2020, as a materials handler. From 2017 to 2020, he worked non-government private sector jobs. He was unemployed from May 2016 to March 2017 and from March 2013 to September 2014. He is a high school graduate and has taken some college courses. He has never married but has cohabitated since May 2019. He has no children. He is seeking his first security clearance. (Items 3-4).

The SOR alleged Applicant owed four delinquent accounts totaling approximately \$14,996. (¶¶ 1.a-1.d) Applicant admitted owing these debts in his May 2020 security clearance application (SCA) and in his August 2020 personal subject interview (PSI) by a defense investigator. An August 2020 credit report also lists all four debts as delinquent. In his answer to the SOR, he admitted owing two of the debts and denied owing the other two without giving a further explanation. The SOR also alleged Applicant failed to file his 2013 through 2019 federal and state income tax returns, as required (¶¶ 1.e-1.f). Applicant admitted, during his PSI, failing to file his federal and state income tax returns for years 2013, 2017, 2018, and 2019. He further explained he did not file federal or state income tax returns for years 2014-2016 because he had insufficient income to require him to file. (Items 3-5)

Applicant claims his delinquent debts were caused by his unemployment in 2013 that resulted in financial hardship. He did not reach out to his creditors at the time to resolve the debts because he was financially unable to do so. During his PSI, he stated that he intended to settle these debts because he now had a steady job. He failed to produce documentary evidence showing that he has made any payments toward these debts, or established a payment or settlement plan with the creditors. His four delinquent debts are unresolved. (Items 2, 4-5)

Applicant claims that he has filed all his federal and state tax returns for years 2017-2020 (year 2020 is not alleged in the SOR), which are the only years he had taxable income. He further claims these returns were filed in March or April 2021. He failed to provide documentation supporting any of these assertions. (Item 4)

Applicant did not provided information about his current budget. There is no evidence available showing that he sought any financial counseling. (Items 1-6)

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 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 has delinquent consumer debts that remain unpaid or unresolved. He also has failed to file his 2013-2019 federal and state income tax returns, or document that he was not required to file those returns. 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;

(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 debts are recent and remain unresolved. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply. His overall financial problems started in 2013 when he lost his job. This was a circumstance beyond his control. However, the evidence does not support that he has taken responsible actions to address his debts or timely file his federal and state tax returns. He failed to document any efforts he made to resolve or pay his delinquent debts. Likewise, he claims that he filed all the federal and state tax returns he was required to file, yet he failed to document these filings or establish that he was not required to file returns for years 2014-2016. AG ¶ 20(b) does fully apply. There is no evidence of financial counseling. There is no documentary evidence showing he made arrangements with the IRS to resolve his tax issues. AG ¶¶ 20(c) and 20(d), and 20(g) do not apply.

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 the facts and circumstances surrounding this case. I considered his periods of unemployment, but I also considered his lack of progress in resolving his debts and his failure to prove he filed his 2013-2019 federal and state income tax returns. Applicant has not established a track record of financial responsibility.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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 – 1f:	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