



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



In the matter of:)
)
) ISCR Case No. 20-03534
)
Applicant for Security Clearance)

Appearances

For Government: Brian L. Farrell, Esq., Department Counsel
For Applicant: *Pro se*

07/14/2022

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 April 16, 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 on April 28, 2021, and requested a hearing before an administrative judge. After a delay because of the COVID-19 pandemic, the case was assigned to me on April 5, 2022.

The hearing was convened as scheduled on June 8, 2022. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant's Exhibits (AE) A through C were admitted in evidence at the hearing without objection. At Applicant's request, I left the record open until June 22, 2022, for Applicant to provide documents to support his case. On June 15, 2022, Applicant submitted AE D and E, which were admitted in evidence without objection.

Findings of Fact

Applicant is a 70-year-old employee of a government contractor. He has worked for his current employer since about April 2019. From April 2019 until November 2019, he was a contract employee. In November 2019, he became a permanent employee of the government contractor. He has bachelor's and master's degrees. He has been married since 1982. He has three adult children. Two of his children have a developmental disorder, and are fully dependent on Applicant's financial assistance. Applicant has never held a security clearance, but has worked on sensitive matters as a government contractor. Applicant has a technical and scientific background, holds numerous U.S. and international patents, and has authored dozens of scientific and technical publications. (Transcript (Tr.) 35-37; 46; Applicant's response to SOR; GE 1.)

Applicant earns approximately \$130,000 annually from his current employer. He earned about \$121,000 in 2020 and about \$126,000 in 2021. He receives \$740 per month from a pension from a former employer. He also receives about \$2,600 per month from Social Security. Applicant's wife does not work, but receives about \$990 per month from social security. Applicant currently has a surplus in funds at the end of each month. At the time of the hearing he had between \$7,000 and \$8,000 total in cash and in a savings account. Applicant has about \$450,000 in assets, including about \$420,000 in equity in his home. From about 2009 until about 2018, Applicant worked as a consultant for several companies, but primarily for Company A. From about 2009 until about 2015, Applicant's earnings from Company A were lucrative. For the first several months, Applicant made between \$5,000 to \$10,000 per month, but that amount increased to about \$20,000 per month for several years. In about 2015, Applicant moved at his own expense in order to be closer to Company A's place of operation. Beginning shortly after his move in 2015, Company A made a strategic change in how they ran their business. This change caused Company A's revenues to drop dramatically, and consequently, Applicant began making far less money. From 2016 until 2018, Applicant made between \$10,000 and \$15,000 per year. He looked for other work but could not find employment in his field until he started with his current employer. As a consultant, he was ineligible for unemployment benefits during this time. (Tr. 27-29; 31-32; 44; 47-49; 50-52, 83-95; Applicant's response to SOR; GE 1, 2; AE A-C)

The SOR alleges that Applicant had ten delinquent debts totaling approximately \$72,000. These debts consisted of telecommunications debts, credit card debts, and delinquent Federal taxes. Approximately \$36,000 of the delinquent debt in the SOR is from unpaid taxes from the 2016 and 2017 tax years. Applicant attributed the financial delinquencies to not having enough money to pay his bills as a result of the aforementioned lack of income and unexpected medical bills that his wife incurred after suffering a fall in 2015. He also acknowledged that part of the reason he fell behind on his Federal taxes was that he failed to account for the amount of Federal taxes he would have to pay from his earnings. Applicant admitted all the SOR debts with additional comment in his response to the SOR. For several of the SOR debts, his comments in his response to the SOR and his testimony make it clear that he does not believe he owes them. Despite his admissions in his SOR response, his testimony

further supports these disputes. (Tr. 3, 40-45, 52-83, 97-99; Applicant's response to SOR; GE 1-5, 6; AE A-D)

The \$251 and \$682 telecommunications debts alleged in SOR ¶¶ 1.a and 1.g, respectively, have not been resolved. These debts were originally incurred with the same telecommunications carrier. While Applicant admitted these debts, he does not believe that he owes them. When Applicant began suffering a decline in income, he cancelled his accounts with this creditor to save money. He claimed that when he closed these accounts, the creditor told him he owed them no money, but then later sent him a bill. He has the funds to pay the accounts but does not want to do so on principle because he thinks he has paid everything he owed on these accounts. He also believes he does not owe these accounts because the creditor offered him the opportunity to open another account with it. Applicant claimed that he had a written invitation from the creditor to open a new account, but he did not provide it. He presented no documentary evidence that he has made a payment, disputed this debt, offered or negotiated a payment agreement, or taken any significant actions to resolve this debt. These debts do not appear on Applicant's 2022 credit report. (Tr. 44-45, 73, 81-82, 98-99; Applicant's response to SOR; GE 1, 2, 4, 5; AE B, C)

The credit card debts alleged in SOR ¶¶ 1.b, 1.d, 1.e, 1.f, and 1.h have not been resolved. In his response to the SOR, Applicant claimed that he has not yet addressed these debts because he has been addressing other debts. At his hearing, he testified that he does not believe that he owes these debts because they are time barred by the statute of limitations in the state where he resides. Applicant also did not attempt to resolve these debts because he disagreed with the interest and penalties that he believed were part of the balance, and because he prioritized other debts. He does not intend to pay these debts. Instead, he plans to let them age off his credit report. (Tr. 40-44, 73-83, 98; Applicant's response to SOR; GE 1-5; AE A-C)

The \$8,564 credit card debt alleged in SOR ¶ 1.c has been resolved. Applicant testified and presented documentation to corroborate that he satisfied this debt with the creditor for less than the full balance in September 2021. Applicant's 2022 credit report also confirms that this debt was settled. (Tr. 78, 97-98; Applicant's response to SOR; GE 1, 3, 4, 5; AE A, C, E)

The delinquent Federal taxes alleged in SOR ¶¶ 1.i and 1.j have been partially resolved. Applicant testified and presented documentation to corroborate that he has made and complied with a payment arrangement with the IRS to satisfy those debts. Applicant was first delinquent on his Federal taxes for the 2015 tax year. He fell behind on his taxes because he did not withhold enough money or make sufficient offset payments throughout the 2015, 2016, and 2017 tax years. When it came time to make his Federal tax payments for those years, he did not have sufficient funds to pay them because of his lack of income with Company A. Applicant first made a payment arrangement with the IRS in 2016 for Federal taxes owed from the 2015 tax year that were not alleged in the SOR. From 2016 until November 2019, Applicant made sporadic but inconsistent payments on his delinquent 2015, 2016, and 2017 Federal taxes. Eventually, in March 2020, he made a payment arrangement with the IRS that he has

consistently paid for over two years, through June 2022. He intends to continue to pay these Federal taxes through his current monthly installment plan. As of June 2022, he had paid down his delinquent Federal tax balance to about \$32,900. He does not owe delinquent Federal taxes after the 2017 tax year. (Tr. 13-14, 38, 42, 52-71, 95-97; Applicant's response to SOR; GE 2; AE C, D)

A friend and former business colleague of Applicant whom he has known for over 25 years testified on Applicant's behalf. Applicant's witness holds a PhD in physics and has held a government security clearance. The witness attested to Applicant's honesty, diligence, and kindness. The witness believes that Applicant should be permitted to hold a security clearance. The witness also corroborated Applicant's employment experience with Company A. (Tr. 24-34)

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’s established SOR debts, including his failure to pay Federal taxes for several years, evidence his history of financial delinquencies. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c), and 19(f), thereby shifting the burden to Applicant to provide evidence in mitigation.

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;

(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.

Applicant attributed his financial problems to underemployment from 2015 until 2019 and unforeseen medical bills that resulted from a fall that his wife took. These causes were beyond his control. However, Applicant's failure to pay his Federal taxes was within his control as he first fell behind on these tax payments because he did not withhold a sufficient portion of his income.

There is documentary corroboration that the debt alleged in SOR ¶ 1.c has been settled and paid for an amount less than owed. SOR ¶ 1.c is concluded for Applicant, as AG ¶ 20(b) and AG ¶ 20(d) apply.

Applicant made a payment arrangement with the IRS before the SOR was issued that he has complied with for over two years. He has also paid his Federal taxes timely after 2017, showing reform and rehabilitation. SOR ¶¶ 1.i and 1.j are concluded for Applicant, as AG ¶ 20(b), AG ¶ 20(d), and AG ¶ 20(g) apply.

None of the other SOR debts are mitigated. Applicant claimed that he does not think he owes the debts in SOR ¶¶ 1.a and 1.g because he thinks he paid the debts in full. However, he provided no evidence that he disputed the debt with the creditor or credit reporting agencies or that he otherwise attempted to resolve the debt. He also provided no documentary proof of payment.

Applicant claimed the credit card debts in SOR ¶¶ 1.b, 1.d, 1.e, 1.f, and 1.h are not owed because they are barred by the statute of limitations in the state where he resides. Even if these debts are time barred, the Appeal Board has “held that reliance on a state's statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigative value.” ISCR No. 15-01208 at 3 (App. Bd. Aug. 26, 2016) (citing ADP Case No. 06-18900 at 5 (App. Bd. Jun. 6, 2008)). Additionally, Applicant’s reliance on the statute of limitations after years of not addressing these debts is not acting responsibly under the circumstances. Finally, while Applicant claimed that he took issue with the amount of these debts because he believed they included interest and penalties, this is not a reasonable basis to dispute these debts. Paying interest and penalties is a standard consequence of borrowing money, especially when one fails to timely pay the borrowed money back. Even if being charged interest and penalties is a reasonable basis to dispute these debts, Applicant provided no documented proof, such as an applicable credit card agreement that did not permit interest and penalties, in order to substantiate the basis of his dispute. Finally, he provided no evidence of his actions to resolve his dispute with these creditors. None of the mitigating factors apply to these debts.

Based upon his attempts to rely upon the statute of limitations and his likely frivolous disputes with paying interest and penalties, I find that Applicant did not act responsibly under the circumstances and that he did not make a good-faith effort to repay his SOR debts. Applicant’s willingness to fail to fulfill his financial obligations because of the charging of interest and penalties leaves me unable to find that his financial issues are unlikely to recur. As evidenced by his unresolved debts, his financial issues are ongoing. These debts and his treatment of them continue to cast doubt on his current reliability, trustworthiness, and good judgment. The financial considerations security concern is 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 have incorporated my

comments under Guideline F in my whole-person analysis. I have also considered Applicant's positive character reference from his witness.

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 concern.

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
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.h:	Against Applicant
Subparagraphs 1.i-1.j:	For 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