



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



In the matter of:)
)
) ISCR Case No. 21-00134
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

07/01/2022

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concern generated by his delinquent debts. Clearance is denied.

Statement of the Case

On February 17, 2021, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On June 16 2021, Applicant answered the SOR admitting all of the allegations and requesting a hearing. On January 20, 2022, the case was assigned to me. On March 27, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of video teleconference hearing, scheduling the hearing for May 5, 2022.

The hearing was held as scheduled. I received six Government exhibits, marked and identified as Government Exhibit (GE) 1 through GE 6, one exhibit of Applicant marked and identified as Applicant's Exhibit (AE) A, and I considered the testimony of Applicant. At Applicant's request, I left the record open at the close of the hearing to allow him to submit additional exhibits. Within the allotted time, he submitted eight exhibits, marked and incorporated into the record as AE B through AE J. The transcript (Tr.) was received on May 17, 2022.

Findings of Fact

Applicant is a 41-year old married man with two children. He has been married since 2018. (GE 1 at 23) He was married previously from 2003 to 2011. The previous marriage ended in divorce. One of his children is from his previous marriage and the other is from a previous relationship.

Applicant is a high school graduate and has taken some college courses. (Tr. 14) He served in the U.S. Navy from 1999 to 2004. He received a general discharge under honorable conditions. (Tr. 14) He has been working for a defense contractor as a management analyst since 2019. (Tr. 14)

Applicant has a history of financial problems, including \$1,641 of delinquent state income taxes incurred between tax years 2008 and 2015, as alleged in subparagraph 1.a. During this period, he was working as a contractor for a company that was not deducting his projected income tax debt from his pay. (Tr. 16) He contends that he has reached out to the state taxing authority, and has settled and paid the debt. (Tr. 16) Applicant provided no documentary proof of this assertion.

The SOR alleges that Applicant did not file his 2012 income tax return on time (subparagraph 1.b), and that he has unpaid taxes totaling \$3,888 from tax years 2012 and 2015, as alleged in subparagraphs 1.c and 1.d. As for the 2012 tax return, allegedly filed late, Applicant admitted this allegation, explaining that although he completed it and mailed it on time, the IRS returned it because he forgot to sign one of the pages. (Answer at 1) He then filed it again, remembering to sign all of the pages.

As for the alleged delinquencies for tax years 2012 and 2015, Applicant admits incurring these delinquencies. He promised to arrange a payment plan after contacting the IRS to ascertain the exact amount of the delinquency. (Answer at 1) The IRS responded to Applicant on May 12, 2022. According to the IRS, Applicant's oldest outstanding unpaid tax bill is from tax year 2019. (AE D at 1, 3) The other late tax bills are for tax years 2020 and 2021. Applicant entered into an agreement with the IRS under which he is to pay \$100 per month to satisfy these delinquencies, beginning in July 2022. (AE D at 1) The IRS correspondence did not include the balance of the outstanding delinquency.

Applicant filed a petition for Chapter 13 bankruptcy in August 2016, as alleged in subparagraph 1.e. (Answer at 1) This bankruptcy was converted to a Chapter 7

bankruptcy in February 2017. In May 2017, approximately \$58,000 of debts, including Applicant's income tax debt for tax year 2015, was discharged. (GE 6 at 22, 24, 29-30)

The debt alleged in subparagraph 1.f, totaling \$10,811, constitutes the balance due on a car loan that had been repossessed. (Answer at 1) Applicant purchased this car in 2018 after the bankruptcy discharge. (AE E) After settling a disability claim with the Navy for \$30,000, Applicant used this money to satisfy the car loan. (AE E; Tr. 32)

The debt alleged in subparagraph 1.g. totaling \$16,815 is a motorcycle loan delinquency. Applicant has been making payments, ranging between \$300 and \$600, towards the satisfaction of this debt since April 2018. (AE A at 2; AE C) The current balance is \$12,109. (AE B)

The debt alleged in subparagraph 1.h, totaling \$7,639, is a car loan that Applicant cosigned with his sister. (Answer at 2) Applicant contacted the creditor, and was told the account had been settled. (Tr. 37) As of the hearing date, Applicant was awaiting confirmation of settlement from the creditor. As of the close of the record, he had not provided any evidence from the creditor corroborating that the debt had been settled.

The debt alleged in subparagraph 1.i, totaling \$2,037, is a delinquent phone bill. Applicant contends that the bill is current. (AE I) Although his current phone bill is from the same phone company of the delinquent phone bill that was reported delinquent on Applicant's June 2020 credit report, the account numbers do not correspond. (*compare* AE I with GE 4 at 7) Moreover, per a June 2020 credit report, Applicant disputed this debt and the dispute was not resolved in his favor. (GE 4 at 7)

Applicant is unsure of the creditor who holds the debt alleged in subparagraph 1.j, totaling \$1,205. He suspects that it is a cell phone account that he opened for his sister and that she did not pay the subsequent bills. (GE 2 at 3) It remains outstanding.

The debt alleged in subparagraph 1.k, totaling \$957, is a phone bill totaling \$957. Applicant confirmed that this account is current. (AE F)

Applicant admits having a credit card delinquency, as alleged in subparagraph 1.l, but denies the amount of \$763. (Answer at 1) He provided no evidence substantiating the legal basis of his dispute.

The debt alleged in subparagraph 1.m, totaling \$385, is a phone bill. Applicant contends that he paid it; however, the evidence is inconclusive.

Applicant attributes his financial problems before filing for bankruptcy protection in 2017 to the breakdown and ultimate dissolution of his first marriage. Specifically, his ex-wife opened numerous credit accounts, which the family court held Applicant responsible for, as part of the divorce decree. (GE 2 at 2) He attributes the recurrent financial problems he experienced after the bankruptcy discharge to the expenses associated with caring for his elderly, wheelchair-bound father who suffered from a substance abuse problem. (Tr.

42, 45) He stated that he “should have found a way to resolve things a lot better” with his father’s well-being without putting his finances in jeopardy. (Tr. 42) Applicant also stated that a series of low-paying jobs and an increase in his child support payments contributed to his post-bankruptcy financial problems. (GE 2 at 2)

In June 2020, Applicant retained a credit repair agency to help him resolve his delinquent finances. (AE H at 3) Applicant was disappointed with the credit repair agency’s services because they continuously told him that disputed debts were being resolved, and that they were negotiating settlements with other creditors, but he never received any confirmation of their progress. (Tr. 33) He characterized their program as a scam. (Tr. 21)

Applicant maintains a budget. He has \$2,816 of monthly expenses. (AE J) The copy of the budget that he provided does not include his monthly income.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 ¶ 1(d) 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

Under this concern, "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." (AG ¶ 18)

Applicant's history of financial problems triggers the application of AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." His history of delinquent state and federal income taxes, together with his failure to file his 2012 federal income tax return on time triggers the application of AG ¶ 19(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 failure to file his 2012 tax return on time occurred because of a good-faith error, as he completed the return, but inadvertently failed to sign it, prompting the IRS to return it to him for his signature. After its return, Applicant completed it, and signed all of the pages. I resolve subparagraph 1.b in Applicant's favor.

As for the allegations set forth in 1.c and 1.d regarding tax delinquencies owed for tax years 2012 and 2015, Applicant contacted the IRS who informed him that although he had a delinquency stemming from several tax years, the earliest year with a tax delinquency was 2019. As for the tax year 2015 delinquency, it was discharged in a Chapter 7 bankruptcy in May 2017. I resolve subparagraphs 1.c and 1.d in Applicant's favor.

Although Applicant no longer owes delinquent federal income taxes for tax years 2012 and 2015, he currently owes delinquent federal income taxes for 2019 through 2021. Moreover, he did not substantiate his contention that the debt owed to his state taxing authority, totaling \$1,641, as alleged in subparagraph 1.a, was satisfied. Consequently, the resolution of the income tax debts from 2012 and 2015 has limited probative value with respect to Applicant's current financial well-being.

The following mitigating conditions are potentially applicable to the remaining SOR allegations:

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;

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;

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;

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

20(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

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 attributes the origins of his financial problems to the breakdown of his first marriage and his subsequent divorce in 2011. However, he incurred the current delinquencies after both the divorce and the discharge of \$58,000 of debt through a Chapter 7 bankruptcy. Moreover, although Applicant recently had to spend money to care for his ailing father, he acknowledges that he could have better managed his personal finances and the money spent on his father's care. Under these circumstances, AG ¶ 20(b) is only partially applicable.

Applicant retained a credit counseling company to help him resolve his financial problems; however, it proved to be, in his words, a “scam.” Consequently, AG ¶ 20(c) does not apply.

Applicant receives credit for satisfying the loan deficiency from a repossessed car (subparagraph 1.k), and getting payments up to date on the bills alleged in subparagraphs 1.g and 1.k. These efforts are sufficient to trigger the application of AG ¶ 20(d).

Applicant’s dispute of the debts alleged in subparagraphs 1.i, 1.j, 1.l, and 1.m, totaling, approximately \$8,800, is not substantiated by any documentary evidence. Under these circumstances, AG ¶ 20(e) does not apply.

As of the hearing date, subparagraph 1.h, totaling \$7,629, was unresolved. Applicant incurred the debt alleged in subparagraph 1.h after he had obtained the bankruptcy discharge of \$58,000. He has incurred additional delinquent federal income tax debt, and his state income tax debt remains outstanding. Under these circumstances, I cannot conclude that his financial problems are unlikely to recur or that they no longer cast doubt on his security worthiness. AG ¶ 20(a) does not apply.

Whole-Person Concept

Applicant has made moderate progress in satisfying his delinquencies. However, there are multiple remaining debts that he contends are satisfied, but lack substantiation, including a state income tax delinquency, and his financial problems recurred after the 2017 bankruptcy discharge. Moreover, although the breakdown of Applicant’s first marriage and his subsequent divorce led to his original financial problems in the early 2010s, I remain concerned that his financial problems recurred after the bankruptcy discharge in 2017. Of particular concern is the fact that some of these recurrent delinquencies are tax debts. Under these circumstances, the likelihood of continuation or recurrence of his financial problems remains an unacceptable security risk.

The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, as set forth in the Directive, to the evidence presented. Under Applicant’s current circumstances, a clearance is not recommended, but should he be afforded an opportunity to reapply for a security clearance in the future, he may well demonstrate persuasive evidence of his security worthiness, particularly if he continues to comply with the payment plans that he has arranged. It is simply too soon at this time to conclude that he has mitigated the financial considerations security concerns given the recurrence of his delinquent debts and the fact that some of the recurrent delinquent debts are income taxes.

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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b – 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g – 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l – 1.n:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge