



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



In the matter of:)
)
) ISCR Case No. 21-01628
)
Applicant for Security Clearance)

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

10/11/2022

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the security concerns under the financial considerations guideline. He did not provide documentation to meet his burden of proof. Eligibility for access to classified information is denied.

Statement of the Case

On September 3, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017. Applicant responded to 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 (FORM) on May 18, 2022. Applicant received the FORM on May 31, 2022. He did not provide a response to the FORM. The Government's evidence, included in the FORM

and identified as Items 1 through 10, is admitted without objection. The case was assigned to me on September 6, 2022. Based on my review of the documentary evidence, I find that Applicant has not mitigated the financial considerations security concerns.

Findings of Fact

In response to the SOR, Applicant admitted SOR allegations in ¶¶ 1.b through 1k with explanations. (Item 2) He denied ¶ 1.a because he claimed it was resolved. He is 58 years old, and is divorced with two adult children. From 1995 through 1997, Applicant attended college, but he did not obtain a degree. Since March 2008, he has been employed with his current employer, a federal contractor. Applicant has not served in the military. He has held a security clearance since about October 2008. He completed a security clearance application on August 14, 2020.

Financial Considerations

The SOR alleges that Applicant has 11 delinquent debts, which include a tax debt to the Federal Government in the amount of \$6,400.00 for tax year 2019. The total amount of delinquent debt, including the tax debt is about \$50,000. (Item 2) The allegations are supported by his admissions and credit reports. (Items 5, 6, and 9) (An alert was reported on February 3, 2022, that an unreported information about Applicant and his finances was reported to the CAF.) (Item 4)

In his answer to the SOR, Applicant stated that his life was severely impacted by a sudden and unexpected separation, and ultimately the divorce, from his wife of 27 years. The separation was three years long and the divorce was final in July 1, 2021. He stated that he is now retaining a bankruptcy attorney to help him reorganize and repay his debts under a chapter 13 bankruptcy. He claimed in his answer to the SOR, that he repaid the IRS for the amount owed and is in good standing with the IRS. He provided no proof of this claim. He stated that he is now in “rebuilding” mode, and his work life is paramount to him. (Items 2, 5, and 9)

During his January 2021 interview, Applicant stated he separated from his spouse in March 2017. He was taken by surprise and his wife took \$7,000 from their savings account. Because his spouse handled all the finances, Applicant assumed all payments were current on his accounts. (Item 7)

In his personal subject interview, Applicant stated that he filed his Federal tax return on July 15, 2020 for tax year 2019, but he had not paid his tax debt at that time. Applicant has not yet set up a payment plan with the IRS. He has now adjusted his withholdings. He verified that all the accounts listed on the SOR 1.b through 1.k were accurate. (Item 7) He wants to discuss the matter with a bankruptcy attorney.

As to SOR ¶¶1.b through 1.k, the accounts are either in collection or charged off. They include medical services and consumer accounts. Applicant did not dispute any of

the accounts, but emphasized that due to his emotional state he did not pay them. He used his credit cards to pay some bills since 2017. His checking account is “nearly empty every two weeks.” (Item 7) Applicant stated that he is living payday-to-payday because he lost his wife’s income and his salary has been cut. He stated that he intends to pay his bills.

Applicant’s personal financial worksheet noted a monthly net income of \$3,842, with expenses of \$2,437. His total monthly debt payments are \$1,123 for a home mortgage, showing a net remainder of \$282. (Item 8) He has real estate valued at \$150,000; stock, bonds and IRA accounts at \$120,000. A car valued at \$15,000 and an annuity of \$109,738. He expects that his spouse will get half of the home sale and annuity. He admits using poor judgment in the wake of his separation and divorce. At this time, he does not have the money to file for bankruptcy, but he hopes to borrow the money from his sister. (Item 7)

Applicant did not provide any documentation for the record to demonstrate that he is taking steps to resolve his delinquent debts. He intends to pay his debts, but promises to pay in the future and possibly use bankruptcy to resolve his debts. However, he has not shown any mitigation for the delinquent accounts, nor has he produced evidence that the tax debt is paid. He is earning a salary, but has not made even a small payment on any of the accounts. He claimed that the IRS debt is resolved, but provided no proof. Absent any proof of payments, Applicant did not meet his burden of proof.

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 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(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.”

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 Exec. Or. 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* Exec. Or. 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 disqualifying conditions under the guidelines: AG ¶¶ 19(a) “inability to satisfy debts”), 19(c) “a history of not meeting financial obligations, and (19f) “failure to file or fraudulently file annual

Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.”

The security concerns raised in the SOR may be mitigated by 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; and

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

Applicant admitted that he is responsible for the delinquent debts listed in the SOR, with the exception of the tax debt. He provided no documentary evidence supporting his claim. With respect to the remaining delinquent debts, he listed no plan to settle or make voluntary payments. His statement is “vague” in that he stated he is “retaining a bankruptcy attorney”. This is not sufficient to shed positive light on his financial state. He does not appear to have made any payments on any of the SOR allegations. He has not shown any evidence of financial responsibility, or a meaningful track record of repayments. He did have circumstances beyond his control: separation, divorce and some loss of income, but he did not act responsibly. He has not sought financial counseling beyond contemplating bankruptcy. Based on the lack of evidence, it is difficult to conclude that he has the requisite judgement, reliability, or trustworthiness needed to have access to classified information. He has not met his burden and none of the mitigating conditions apply. Any doubts must be resolved in favor of the Government.

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. Applicant suffered a separation and divorce that changed his entire life and left him with one income. He has been working consistently, but it is doubtful that he will be able to meet his future financial obligations. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. He has not met his burden of proof.

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 –1k:	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's eligibility for a security clearance. Continued eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge