



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



In the matter of:)
)
) ISCR Case No. 21-02438
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

11/02/2022

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for a security clearance is denied.

Statement of the Case

On February 17, 2022, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 elected in his February 22, 2022, response to the SOR (Answer), to have his case decided on the written record in lieu of a hearing. The Government submitted its written case on May 19, 2022. A complete copy of the file of relevant

material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM and submitted a response on August 1, 2022 (FORM Response). The case was assigned to me on October 3, 2022. The Government's documents, identified as Items 1 through 6 in its FORM, and Applicant's response to the FORM are admitted in evidence without objection.

Findings of Fact

Applicant admitted all of the SOR allegations. He is 49 years old. The dates of his first marriage and divorce are not in the record. He remarried in 2011 and divorced in 2019. As of his April 2021 background interview, he was engaged to remarry. He has four adult children. He received his basic law enforcement certification in May 2013. He previously worked overseas as an armed security officer for another DOD contractor from April 2017 to April 2019. He worked as a school resource officer from May 2019 to February 2021. As of his SCA, he was an armed security officer overseas for his employer, a DOD contractor, since March 2021. He has never held a DOD security clearance. (Answer; Items 3, 5)

The SOR alleged that Applicant failed to file, as required, his federal and state income tax returns for at least tax years (TY) 2013 through 2020 (SOR ¶¶ 1.a - 1.b). It also alleged that he had seven delinquent consumer debts, totaling \$49,689 (SOR ¶¶ 1.c – 1.i). In addition to his admissions in his Answer, Applicant also disclosed and discussed his delinquent taxes and debts in his SCA, during background interviews from April 2021 and May 2021, and in his January 2022 response to interrogatories. A credit bureau report from March 2021 reports all of Applicant's delinquent consumer debts. A motor vehicle registration record reflects the debt for SOR ¶ 1.g. (Items 1 - 6)

During his April 2021 background interview, Applicant attributed his financial issues to being the sole provider for his family and not having enough money to pay his debts. He also stated in his Answer, "My former wife unbeknownst to me had a chemical dependency." He also stated that she opened various credit accounts in his name without his knowledge until he blocked her from being able to do so. (Answer; Item 5)

Applicant listed in his SCA that he failed to file his federal and state income tax returns for TY 2015, and that he consequently owed \$10,000. He acknowledged during his April 2021 background interview that he failed to file his federal and state income tax returns for TY 2013, 2014, and 2015, but he could not provide a reason for his failure. He indicated that he filed his federal and state income tax returns for these tax years in 2016, and that he owed between \$5,000 and \$7,000 in federal taxes. He indicated that the IRS withheld his tax refunds to resolve his outstanding taxes. (Items 3, 5)

Applicant indicated during his April 2021 background interview and in his response to interrogatories that he did not file his federal and state income tax returns for TY 2017, 2018, and 2019 because he was tax exempt due to his overseas

employment. He further indicated during his April 2021 background interview that since returning from overseas employment, he did not file his federal and state income tax returns for TY 2019 and 2020 because his employer did not provide him with a W-2. He indicated that he last filed his federal and state income tax returns in 2016, and he was willing to submit any unfiled federal and state income tax returns if required for his employment or security clearance. He stated in his response to interrogatories that he was unemployed in 2020 and part of 2021. He stated in his Answer that he was in the process of filing his federal and state income tax returns for 2013 through 2021. He stated in his FORM Response that he filed his federal and state income tax returns for tax years 2013 to 2021, but he did not provide documentation to corroborate his claims. IRS records reflect that as of January 2022, the IRS did not have record of federal income tax returns for Applicant for TY 2018, 2019, 2020, and 2021. (Answer; Item 5; FORM Response)

SOR ¶¶ 1.c and 1.h are for two charged-off auto accounts with the same creditor, for \$7,560 and \$10,697, respectively. Applicant acknowledged during his April 2021 background interview that he financed \$10,000 to buy a car (Car 1) through this creditor. He then traded in Car 1 when he purchased another car (Car 2), as discussed below in SOR ¶ 1.g. He was unsure if he still owed a balance on the loan for Car 1. He also acknowledged that he voluntarily surrendered another car (Car 3), which he also financed through this creditor, but he could not recall specific details about this auto loan. He stated in his FORM Response that both debts were charged off. (Item 5; FORM Response)

SOR ¶ 1.d is for a \$599 gym account in collection. Applicant indicated during his April 2021 background interview that he had this gym membership, in which he paid \$25 monthly, between 2019 and 2020. He did not make any payments on this gym membership for over a year, and then he left this gym for another gym. He stated in his Answer that he paid this debt in February 2022. He maintained in his FORM Response that he paid this debt, but he did not provide documentation to corroborate his claim. (Answer; Item 5; FORM Response)

SOR ¶ 1.e is for a \$451 energy account in collection. Applicant indicated during his April 2021 background interview that unbeknownst to him, his ex-spouse used his name on this account at a residence she lived in while he was employed overseas. He acknowledged that they were married when she did so. Applicant stated in his Answer and FORM Response that he paid this debt, but he did not provide documentation to corroborate his claim. (Answer; Item 5; FORM Response)

SOR ¶ 1.f is for a \$158 gym account in collection. Applicant indicated during his April 2021 background interview that he opened this gym membership between 2011 and 2015, while he was self-employed. He assumed that he had an outstanding balance because he did not pay his last membership fee. Applicant stated in his Answer and FORM Response that he paid this debt, but he did not provide documentation to corroborate his claim. (Answer; Item 5; FORM Response)

SOR ¶¶ 1.g and 1.i are for a \$25,869 charged-off auto account and a \$4,355 charged-off credit account, respectively. Applicant indicated during his April 2021 background interview that he purchased Car 2 through a loan of approximately \$35,000 from the creditor in SOR ¶ 1.i. He was unable to make monthly payments on his auto loan and he surrendered Car 2 in 2016, prior to his overseas employment. He acknowledged being told that he might still owe a balance on the loan after he voluntarily surrendered the car, but he never followed up with the creditor. A motor vehicle registration record reflects that the creditor in SOR ¶ 1.g had a lien on Car 2. He stated in his FORM Response that both debts were charged off. (Items 5, 6; FORM Response)

Applicant stated in his FORM Response that his credit score was improving. He stated that he was striving to continue to improve his financial status. There is no evidence in the record that he received financial counseling. (Form Response; 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 access to classified information 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 as to potential, rather than actual, risk of compromise of classified information. Section 7 of Exec. Or. 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* Exec. Or. 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 pertaining to 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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. AG ¶ 19(a), an “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 or failure to pay annual Federal, state, or local income tax as required” are relevant. Applicant has a history of not paying his debts and being unable to do so. He also failed to timely file his federal and state income tax returns for TY 2013 to 2020. The above disqualifying conditions apply.

I have considered all of the mitigating conditions under AG ¶ 20 and find the following relevant:

(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.

Conditions beyond Applicant's control, as previously discussed, contributed to his financial problems. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. He did not provide documentation to corroborate his claims that he filed his federal and state income tax returns for TY 2013 to 2020, or that he paid the debts in SOR ¶¶ 1.d, 1.e, 1.f. Without any proof that he made efforts to resolve the debts in SOR ¶¶ 1.c, 1.g, 1.h and 1.i, his reliance on their charged-off status is insufficient for mitigation. There is no evidence that he received any financial counseling. I find that Applicant's financial difficulties continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(g) are not applicable.

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 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. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated the financial considerations security concerns.

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.i:	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. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge