



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 20-00654

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 21, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). On June 29, 2021, Applicant submitted an answer to the SOR and requested a hearing (Answer).

On March 18, 2022, the case was assigned to me. On August 23, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 28, 2022. The hearing was rescheduled to October 4, 2022, due to technical problems. It was held as rescheduled using a video teleconference.

Department Counsel offered Government Exhibits (GE) 1 through 7 into evidence. Applicant offered Applicant Exhibits (AE) A through D. All exhibits were admitted into the record without objections. The record remained open until October 25, 2022, to give Applicant an opportunity to submit additional documents. He submitted exhibits AE E, H,

I, R, S and T. (These exhibits are not sequential because they reference specific debts.) All exhibits are admitted. I received the transcript of the hearing (Tr.) on October 27, 2022.

Findings of Fact

In his Answer, Applicant admitted the SOR allegations in ¶¶ 1.d, 1.e, and 1.h. He denied the SOR allegations in ¶¶ 1.a, 1.b, 1.c, 1.f, 1.g, and 1.i through 1.t.

Applicant is 50 years old. He is a high school graduate. He has been married to his second wife since 2009. They have a daughter. He has a son from his first marriage. He enlisted in the Air Force in March 1993, and he was honorably discharged in March 1997. While in the Air Force, he held a security clearance and did not have any infractions. He then joined the Air Force Reserve. He said he could not complete his enlistment contract because of his civilian job commitments. He was separated from the Reserve with an other than honorable discharge in 1998. (GE 2). He has worked for defense contractors since 2017 and his current employer since April 2021. (Tr. 17-22, 50; GE 1)

In May 2017, Applicant submitted a security clearance application (SCA). In it, he disclosed that he failed to pay Federal and state income taxes for years 2013, 2014, and 2015 because he did not have enough money. He said he had requested the Internal Revenue Service (IRS) and his state to withhold his refunds to satisfy the debts. (GE 1 at 36).

In November 2019, Applicant answered the Government's interrogatories. He acknowledged that he had not paid a charged-off automobile loan for \$9,896, an automobile repossession with a balance of \$6,741, a \$1,624 cell phone debt, and a cable box debt of \$242. (GE 2) None of these debts are resolved, as noted below.

Applicant testified that his financial problems began in 2015 when he moved to another state, and then moved again a year or two later for employment. He said he moved a couple times over the past 13 years, which resulted in additional expenses. (Tr. 54-56) After his divorce from his first wife in 2007, he was required to pay child support, which at times strained his finances because his second wife was not always working. (Tr. 23)

Based on credit bureau reports (CBR) from June 2017 and March 2020, Applicant's admissions in his SCA, and his financial interrogatories, the SOR alleged 20 financial security concerns, which included eight Federal and state tax issues. (GE 4). His tax liability for unpaid Federal and state income taxes totaled \$19,564. The 12 alleged delinquent consumer debts totaled \$21,540, and became delinquent between 2011 and 2017. The SOR alleged a total of \$41,104 in outstanding debt. (GE 3, 5, 6, and 7)

SOR ¶ 1.a alleged Applicant failed to file his 2013 Federal income tax return. The date that the return was filed is not in this record, however, there is evidence that he paid his delinquent 2013 taxes, indicating that the return was filed. (GE 2; AE B at 1)

SOR ¶ 1.b alleged Applicant failed to file his 2014 Federal income tax return. The return was filed in 2016. (GE 2; AE B at 1; AE E).

SOR ¶ 1.c alleged Applicant failed to timely file state income tax returns for years 2013 and 2014. He filed those returns in 2016. The state filed three liens against Applicant in 2016, totaling \$8,081. All outstanding taxes have been paid. (Tr.26; GE 2; AE B at 3; AE C)

SOR ¶¶ 1.d and 1.e alleged Applicant was indebted to the IRS for \$5,868 for tax year 2014 and \$5,615 for tax year 2015. He started making payments on his Federal taxes in 2018. (GE 2) He said he completed payments on his 2013 and 2014 Federal tax debt, and continues to make payments on his 2015 tax debt. He thinks he still owes the IRS about \$5,200. His tax refunds have been withheld by the IRS to reduce the debt. Between 2018 and 2022, he has made 52 payments on three years of unpaid taxes. (Tr. 24-25, 30, 58; AE D) These taxes are being resolved.

SOR ¶ 1.f alleged an \$85 utility debt went into collection in 2018. Applicant has not resolved this debt, but said he intended to look into the matter and pay it post-hearing. (Tr. 35) It is unresolved.

SOR ¶ 1.g alleged a \$1,625 cell phone debt went into collection in 2017. Applicant has not resolved this debt. (Tr. 36-37)

SOR ¶ 1.h alleged a \$459 credit card debt was in collection. Applicant said he paid it last year, while applying for a mortgage to buy his house. He agreed to submit proof of payment post-hearing. (Tr. 36-37; AE H) This debt is unresolved.

SOR ¶ 1.i alleged a \$173 debt was owed to an energy company. It was charged off and paid on October 5, 2022. (Tr. 37-36; AE I) This debt is resolved.

SOR ¶ 1.j alleged an automobile loan was charged off for \$9,896 in December 2016. Applicant lost his job and could not make his payments. The account was opened in July 2013. He asked the creditor to add the unpaid amount owed to the balance of the loan, and told them he would catch up when he obtained a position. The creditor refused to do that. Applicant acknowledged that he still owes this debt. (Tr. 38–40) This debt appears on his February and September 2022 CBRs. (GE 6 and 7) It is unresolved.

SOR ¶ 1.k alleged an automobile loan was reported as a repossession in May 2017 with a delinquent balance of \$6,741. Applicant opened the loan in late 2016, after he lost the car listed in SOR ¶ 1.j. Applicant purchased this car at an automobile dealership through their in-house financing department. He drove it for six months and made weekly payments of \$45 during that time. When he obtained a position in another state, the creditor would not allow him to take the car out of state. He has not addressed this debt. (Tr. 40-42) It appears on his February and September 2022 CBRs. (GE 6 and 7) It is unresolved.

SOR ¶ 1.l alleged a \$242 collection debt is owed to a cable company for a cable box he obtained in 2016. Applicant said he returned the box to the company, but the company reported it delinquent in 2017. He stated that the debt was resolved during the period he was applying for a mortgage in July 2022. He did not submit proof of its resolution. (Tr. 42-43) This debt is unresolved.

SOR ¶ 1.m alleged that in 2016, Applicant's previous home state filed a \$2,466 tax lien against him. The specific tax year is not part of this record. It was paid and resolved as of May 2022, as noted in SOR ¶ 1.c above. (Tr. 27-28; AE B at 3, AE C)

SOR ¶ 1.n alleged that in 2016, Applicant's previous home state filed a \$3,471 tax lien against him. The specific tax year is not part of this record. It was paid and resolved as of May 2022, as noted in SOR ¶ 1.c above. (Tr. 27-28; AE B at 3, AE C)

SOR ¶ 1.o alleged that in 2016, Applicant's previous home state filed a \$2,144 tax lien against him. It was paid and resolved as of May 2022, as noted in SOR ¶ 1.c above. (Tr. 27-28; AE B at 3, AE C)

SOR ¶ 1.p alleged a \$1,233 collection debt owed to a store for tools Applicant purchased in 2013 for his job. He said he paid this debt in 2016, but does not have a receipt from his former employer because the shop closed. The June 2017 CBR notes that the account was closed by the creditor. It does not appear on subsequent credit reports. (Tr. 43-44; GE 3, GE 4, GE 6) This debt is resolved.

SOR ¶ 1.q alleged a \$495 debt owed to a cell phone company. Applicant stated he tried to return a phone to the creditor because the carrier did not have service in his new location. He said he does not owe this creditor, but did not provide proof confirming that. (Tr. 44-45) This debt appears on his June 2017 CBR as a collection account assigned in 2015. (GE E) This debt is unresolved.

SOR ¶ 1.r alleged a \$263 collection debt owed to the same cable company mentioned in SOR ¶ 1.l above, but references a different cable box Applicant had while living in another state. It was paid on October 5, 2022. (Tr. 45-46; AE R)

SOR ¶ 1.s alleged a \$168 collection debt owed to a communications company. It was paid in January 2019. (Tr. 47; AE S)

SOR ¶ 1.t alleged a \$160 medical debt in collection. Applicant said he was waiting for his insurance company to cover it. He paid it on October 4, 2022. (Tr. 48; AE T)

Applicant submitted a family budget. He and his wife have a net monthly salary of \$8,857, including an \$803 payment from Veterans Affairs (VA) for Applicant's disability rating. (Tr. 22) Their monthly expenses and payments on debts, including a new mortgage, an IRS payment, credit cards, and a car loan total \$7,480. They have \$1,377 remaining at the end of the month. (Tr. 31-34; AE A)

Applicant's September 2022 CBR lists a \$118 debt owed to an internet company that was reported in September 2022. He said this is the same debt listed in SOR ¶ 1.s. He stated he intended to resolved it. (Tr. 48-49)

Applicant and his wife have re-budgeted their finances to avoid a similar problem occurring in the future. He does not intend to fall behind on his taxes in the future. He will continue paying his 2015 Federal tax debt until it is paid. (Tr. 29-30) He intends to continue resolving and paying unpaid debts. (Tr. 48)

Policies

The national security eligibility action was taken under Executive Order 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 Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which became effective within DOD on June 8, 2017.

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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(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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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.

Finally, as emphasized in Section 7 of EO 10865, 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 lists conditions that could raise security concerns under AG ¶ 19. The following three potentially apply 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 has a history of financial problems, including multiple delinquent debts, and unfiled and unpaid Federal and State taxes. The evidence establishes the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following five 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;

(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 has seven old debts that total \$19,543 and remain unresolved. There is insufficient evidence to establish mitigation under AG ¶ 20(a). There is evidence that some debts are attributable to a number of geographical moves he made for employment, and possibly the result of his divorce and support payments. There is insufficient evidence to establish full mitigation under AG ¶ 20(b) because he did not demonstrate that he acted responsibly under those circumstances. There is no evidence that he participated in credit counseling; however, there is evidence that his financial problems are slowly coming under control, due to some efforts to resolve them. He resolved five delinquent debts that total \$1,997: SOR ¶¶ 1.i, 1.p, 1.r, 1.s, and 1.t. He also resolved his state tax problems and paid a portion of his unpaid Federal taxes. He established some mitigation under AG ¶ 20(c).

Applicant established mitigation under AG ¶ 20(d) and 20(g) as to all tax-related allegations: SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.m, 1.n, and 1.o. He filed his Federal income tax returns for 2013 and 2014, and his state income tax returns for 2013 and 2014. He paid and resolved three state liens. In 2018, he entered into a repayment plan with the IRS to resolve his 2013, 2014 and 2015 taxes. Since then, he resolved his 2013 and 2014 delinquent Federal taxes and he continues to resolve the remaining 2015 delinquent Federal taxes.

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.

According to AG ¶ 2(c), the ultimate determination of whether to grant 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.

Applicant is 50 years old and served in the Air Force for about five years. In May 2017, he applied for a security clearance, and in his SCA he disclosed delinquent Federal and state tax issues. In March 2018, he began addressing his 2013, 2014 and 2015 tax issues. In his November 2019 interrogatories, he reported that he had not resolved two automobile loans, a cell phone debt, and a cable box debt. Subsequently, those debts, and others, were alleged in the June 2021 SOR. Those four old debts remain unaddressed, despite having notice of the Government's concerns since 2019 and again in 2021 when he received the SOR. He has made good progress in resolving his taxes, however, he continues to owe about \$5,200 to the IRS for 2015, and he has not addressed \$19,500 of delinquent debt. While Applicant does not need to be debt free for purposes of obtaining a security clearance, he is required to demonstrate responsible and reliable financial management. He has not sufficiently done that at this time.

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 fully mitigate the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a through 1.e:

For Applicant

Subparagraphs 1.f and 1.g:

Against Applicant

Subparagraphs 1.h and 1.i:

For Applicant

Subparagraphs 1.j through 1.l:

Against Applicant

Subparagraphs 1.m through 1.p:

For Applicant

Subparagraph 1.q:

Against Applicant

Subparagraphs 1:r through 1.t:

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.

Shari Dam
Administrative Judge