



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



In the matter of:)
)
) ISCR Case No. 12-09038
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

01/06/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On May 13, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on May 30, 2014, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on August 5, 2014. 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 on August 26, 2014. He responded with documents that I have marked Applicant's exhibits (AE) 1 through 3. The case was assigned to me on December 29, 2014. The Government exhibits included in the FORM (Items 4-7) and AE 1 through 3 are admitted without objection.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer since May 2008, and he has worked overseas since at least January 2014. He has held a security clearance since about 2009. He served in the U.S. military from 1995 until he was honorably discharged in 1997. He served in the National Guard from 1997 until he was honorably discharged in 2003. He married in 1997 and divorced in 2009. He married again in 2012. He has one minor child.¹

The SOR alleges eight delinquent debts totaling about \$31,800. Applicant admitted owing all the debts.²

Applicant attributed his financial problems to his divorce. Applicant and his then wife cosigned a loan for a car in 2005. Applicant took the car after they separated, and he agreed to make the payments. In about 2007, he tried to trade the car for the purchase of another vehicle. His ex-wife would not permit transfer of the car. Applicant did not want to continue making loan payments for a car that he could not trade or sell. He voluntarily returned the car to the lienholder. SOR ¶ 1.a alleges the charged-off deficiency balance of \$5,998 on the loan.³

The \$10,546 credit card debt alleged in SOR ¶ 1.b is a joint debt. Applicant stated that he used the account to consolidate other debts in 2007. He stated that he paid the account until after his divorce. His ex-wife continued to draw on a line of credit on the account after their divorce. Applicant contacted his ex-wife and asked her to stop withdrawing from the account. She refused. Applicant stopped paying the debt in about 2010 or 2011.⁴

The remaining six debts alleged in the SOR are individual debts. Applicant retained a debt resolution company in about December 2009. He paid the company \$250 a month until June 2010, when he increased the payments to \$500 per month. Applicant's credit reports show a debt with a high credit of \$754 was settled in 2010. This debt was not alleged in the SOR. Applicant terminated the contract with the debt resolution company in December 2010 because he felt his credit was at an acceptable level, and he could manage his debts on his own.⁵

¹ Items 4, 7.

² Item 3.

³ Items 3-7.

⁴ Items 3-7.

⁵ Items 3, 5-7.

Applicant discussed his delinquent debts when he was interviewed during his background investigation in April 2012. He responded to DOHA interrogatories about his finances in January 2014. He wrote that he paid an \$82 debt that was not alleged in the SOR.⁶ He answered that he had made no payments toward his other delinquent debts:

For all debts listed I haven't taken any action as to [the debts] because I am currently out of the country, and would prefer to do business where communication is constant and dependable, and if need be I am readily available if my presence is needed.⁷

Applicant submitted a personal financial statement (PFS) with his response to DOHA interrogatories. He noted that he and his wife had a total net monthly income of \$5,058, total monthly expenses of \$1,357, and \$530 monthly payments on a car loan, leaving a net remainder of \$3,171. He did not report any payments toward his delinquent debts.⁸

In his April 2014 response to the SOR, Applicant stated that he had opened a bank account, and he was depositing 15% of his wages into the account to be used to pay or settle his debts. In his September 2014 response to the FORM, he stated that he paid the \$488 debt alleged in SOR ¶ 1.g, but he did not submit proof. He stated the payment letter from the collection company went to his address in the United States.⁹

SOR ¶ 1.h alleges a delinquent debt of \$1,305 owed to a gym. Applicant stated that he included "a receipt from one of my creditors ([gym]) which is proof I have been making payments to clear up my credit." Applicant submitted a letter from the gym showing Applicant "agreed to pay \$50 which is due by 08/29/2014." He did not submit documented proof of any payments to the gym, but the letter cited the balance of the account as \$1,204. Applicant stated that he contacted the collection company for the \$647 debt alleged in SOR ¶ 1.f to make arrangements to pay the debt. His plan is to pay one debt and then move on to the next.¹⁰

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

⁶ Item 7.

⁷ Item 7.

⁸ Item 7.

⁹ Item 3; AE 2.

¹⁰ Item 3; AE 1-3.

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 access to classified information will be resolved in favor of 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 or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that he is unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed his financial problems to his divorce and the actions of his ex-wife. Those events were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant has worked for his current employer since May 2008. He has been divorced for more than five years. His PFS reflects \$3,171 in discretionary income each month. Even if it is accepted without documentation that Applicant paid the \$488 debt alleged in SOR ¶ 1.g, Applicant has made minimal efforts to pay his delinquent debts.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his

current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. AG ¶ 20(c) is only applicable to the debt alleged in SOR ¶ 1.g. I find that financial considerations security concerns remain despite the presence of some mitigation.

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(a):

- (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. I have incorporated my comments under Guideline F in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's honorable military service and his work overseas for a defense contractor. However, Applicant has unresolved financial problems.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude 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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge