



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



In the matter of:)
)
) ISCR Case No. 12-09829
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

08/19/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On April 29, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on May 13, 2015, and requested a hearing before an administrative judge. The case was assigned to me on June 12, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 19, 2015. I convened the hearing as scheduled on July 29, 2015. The Government offered exhibits

(GE) 1 through 5, which were admitted into evidence without objection. Applicant testified, and he offered Applicant Exhibits (AE) A and B, which were admitted into evidence without objection. The record was held open until August 17, 2015, to allow Applicant to submit additional documents. He submitted AE C through F, which were admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on August 6, 2015.

Findings of Fact

Applicant admitted all the allegations in the SOR. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 32 years old. He completed two years of college courses, but has not earned a degree. He does not have military service. He is not married, but lives with his fiancée who is the mother of his two children, ages five and two. She has a ten-year-old son who lives with them. He has worked for the same employer since 2008 and was employed steadily before then. He has no periods of unemployment.²

In 2008, Applicant was living in another state where he was earning about \$79,000. He was offered a new job in a different state and accepted it. He vacated the apartment he was living in, but did not provide the landlord with the required 60-day notice. He admitted he left the state without tying up his financial issues. In April 2012, Applicant completed a security clearance application (SCA). In June 2012, he was interviewed by a government investigator as part of his background check.³ He disclosed in the SCA that he owed the landlord approximately \$434 (SOR ¶ 1.d-\$754). He stated: "payment arrangements have been made and issue is getting resolved." During his interview, he confirmed he owed the debt and reached an agreement with the original creditor to make two payments of \$200 starting in June 2012. He was confronted with information from the collection company that the debt was now \$904. Applicant did not know why it increased and indicated he would contact the creditor directly to resolve the matter. At his hearing, Applicant indicated he has made some payments over the past years and made the last payment a couple of months ago. After the hearing, Applicant provided a document from the collection company dated August 7, 2015. The document states the creditor accepted a settlement of \$550 on the account and it was paid.⁴

In the SCA, Applicant disclosed he owed a state tax debt of approximately \$4,971 (SOR ¶ 1.a-tax lien entered October 2009). He stated: "Currently working on

¹ Hearing Exhibit I is Department Counsel's memorandum noting he did not object to the additional exhibits.

² Tr. 20-23.

³ GE 1 and 3.

⁴ Tr.36-40, 60, 63-64; AE D.

payment plan to resolve this matter.” He also stated: “Called the comptroller of [State] to set up payment plan along with submitting payments.”⁵ During his background interview, he indicated the state tax debt was from 2005 or 2006, and he had started making payments, but was never consistent. He indicated he entered into an agreement in May 2010 and started making monthly payments of \$100.⁶ His daughter was born in August 2010 which impacted his finances. He admitted he “dropped the ball” and did not continue payments.⁷ He admitted he did not make consistent payments.

At his hearing, Applicant testified that after he completed his SCA, he arranged a payment plan with the state to pay approximately \$250 a month. He made one to two payments and stopped. He also stated he made one \$150 payment between 2012 and 2015. He contacted the state around February or March 2015, but it wanted a payment of \$1,500, and he did not have the funds. In June 2015, he sought assistance from a commercial tax relief company in an attempt to lower the payment sought.⁸ He paid the company \$300. After the hearing, Applicant provided copies of three checks (\$45 dated August 12, 2105; \$500 dated August 10, 2015; and \$1,000 dated August 5, 2015) made out to the comptroller of the state.⁹ He noted in an email submitted after the hearing that the sum of the checks was a down payment to the state to enroll in a payment plan.¹⁰ No information was provided to show the terms of the payment plan or if one has been accepted.¹¹

The debt in SOR ¶ 1.b (\$175) is for medical services. Applicant provided proof the debt was paid in full in 2012. The debt in SOR ¶ 1.e (\$3,165) is a credit card debt that was paid in full and the account closed in October 2014. The debt in SOR ¶ 1.f (\$2,377) for communication services was resolved and the account closed. Applicant provided supporting documents for the above debt resolutions.¹² Applicant stated he paid the debt in SOR ¶ 1.g (\$138) for cable services, but was waiting to receive the confirmation letter. The debt was owed from 2008 and was listed on the 2012 credit report as delinquent. The most current credit report shows there is a zero balance owed on this debt.¹³

⁵ GE 1.

⁶ GE 3.

⁷ Tr. 69.

⁸ AE B.

⁹ AE C.

¹⁰ AE F.

¹¹ Tr. 23-33, 65-75.

¹² Tr. 19; Answer to SOR with attachments.

¹³ Tr. 41-43; GE 2 and 4.

The debt in SOR ¶ 1.c is for a loan obtained in 2009 with a current balance of \$2,137. The SOR alleges the debt was 120 days past due and the delinquent amount was \$1,867. Applicant explained this was a personal loan. He was to pay \$90 twice a month. He stated he made the last two months payments, but missed two to three months before then. He obtained this loan so he could pay the state tax debt alleged in SOR ¶ 1.a. The original loan was for \$7,000. He did not use the entire loan to pay his tax debt, but used it for other expenses. His current plan is to borrow money from his parents to resolve the debt. After his hearing, he provided a document to show he made a payment of \$188 toward the balance of the debt in July 2015. The document does not show the debt is no longer past due and is current. The balance on the debt is \$2,401. He did not provide proof of other payments. He explained he fell behind in his payments when his second child was born.¹⁴

Applicant's annual salary for 2015 is \$99,000. His salary for 2014 was \$93,000; 2013 was \$94,000; 2012 was \$96,000; 2011 was \$96,000, and 2010 was \$96,000. His fiancée did not work when they were first together, but she has been employed full time for the past two years. Applicant admitted he did not budget his money or pay close attention to his expenses. He admitted he was irresponsible with his money and failed to abide by payment agreements. He and his fiancée keep their money separate, and he pays the household expenses. He indicated that she contributes to the household by paying the utilities and some money towards the rent. He does not know how much income she earns. He has not had financial counseling. He admitted he lives paycheck to paycheck. He does not have a budget. He estimated he has about \$300 to \$400 remaining at the end of the month after paying expenses. He estimated he had about \$100 in his checking account and \$100 in his savings account. He owes \$1,000 toward a hospital bill on which he is making \$50 to \$100 monthly payments. Applicant and his family recently moved and their rent increased by \$200.¹⁵

Applicant testified, in addition to his full-time job, that he is also a videographer, and he is currently working as an unpaid intern. About three years ago he purchased a camera and lens for the job, which cost about \$1,200. He paid it with installment payments.¹⁶

Applicant provided character letters that describe him as a person with integrity, who is reliable, capable, energetic and kind. He is considered a valuable partner and asset who provided exceptional services and superior performance. He is a dedicated and motivated professional.¹⁷

¹⁴ Tr. 33-35, 44-47; AE E.

¹⁵ Tr. 28-29, 48-61, 81-83.

¹⁶ Tr. 78-80.

¹⁷ AE A.

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(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." 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 not drawn 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. 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 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 Executive Order 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* 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant had numerous delinquent debts that were not paid timely, an unpaid state tax lien from October 2009, and an unpaid loan. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 has been consistently employed for at least the last eight years and has earned a substantial salary during the past four to five years. He has been aware of the concern about his finances since at least 2012 when he completed his SCA and was later interviewed by a government investigator. He paid one debt in 2012. He resolved some of the other debts alleged in the SOR in 2014 and 2015. Despite promises to pay his state tax lien, he repeatedly failed to do so. After his hearing, he made a down payment on the tax debt. The loan he originally obtained to pay his state tax lien was past due. He made a payment on it after his hearing. Applicant's inaction regarding his financial obligations was not infrequent and did not occur under unique circumstances that are unlikely to recur. His past conduct casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems and inability to make consistent payments on his debts due to the birth of his children. He indicated the mother was not working. His children are five and two years old. Having a child does have a financial impact on a family. However, it is not an unexpected impact, but rather it is one that can be planned for in advance. I will consider AG ¶ 20(b) broadly in that perhaps he did not realize the financial impact his first child would have on him, but he should have been aware when three years later he had another child. For the full application of this mitigating condition, he must have acted responsibly under the circumstances. The evidence supports that Applicant was aware of his delinquent debts, but was slow to resolve them until he realized his application for a security clearance was in jeopardy. He had two agreements with the state comptroller to pay his state tax lien that he failed to pay. He contacted the state comptroller in February or March of 2015, but did not take action to address the tax lien until after his hearing. He did not resolve his delinquent debt for the debt owed on his apartment from 2008 until recently, despite his promise in 2012 that he was paying it. He has been inconsistent in making payments to resolve the loan he owes in SOR ¶ 1.c. I find AG ¶ 20(b) only partially applies.

Applicant's state tax lien entered in 2009 was for taxes from 2005. After his hearing he made a payment. It is unknown where he obtained the money to make a payment. There is no evidence he has received financial counseling. Although he has resolved many of the debts on the SOR, I am not convinced that Applicant's financial problems are resolved or under control. He does not have a consistent track record of keeping his promises to pay his delinquent debts. I am not convinced that he will abide by his promises to pay his tax lien or make consistent payments to resolve the delinquent loan. He failed to show responsible conduct regarding resolving his debts. AG ¶¶ 20(c) does not apply.

Applicant has paid, settled, or resolved some of the delinquent debts alleged. However, Applicant was less than attentive in paying them timely. Many have taken years to resolve. The debt owed for vacating his apartment early was from 2008. He has not resolved the loan alleged in SOR ¶ 1.c and the recent payment he made was after his hearing. AG ¶ 20(d) applies to the debts that have been resolved.

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 my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 32 years old. He has two children and lives with their mother, his fiancée. He has been consistently employed for many years and has earned a substantial income for the past four to five years. Other than starting a family, he failed to provide a reasonable explanation for his failure to pay his delinquent debts. He stated that his fiancée has been employed for the past two years, but it is unclear if she contributes to the household expenses. He admitted he lives paycheck to paycheck. Applicant was on notice in 2012, when he applied for a security clearance, that his finances were an issue. Despite promises to pay his delinquent accounts, he failed to do so timely and reneged on promises and agreements. His conduct raises questions about his reliability. Applicant's attitude toward his civic duty to pay his taxes has been indifferent at best. His lack of appreciation for the importance of being fiscally responsible, especially towards his taxes, raises questions about his judgment. Applicant has not established a reliable track record that convinces me his finances are under control.

Applicant's conduct raises questions about his judgment, reliability, and trustworthiness. 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 Applicant failed to mitigate the security concerns arising under the financial considerations guideline.

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
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For 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 grant Applicant a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge