



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



In the matter of:)
)
) ISCR Case No. 12-10801
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

10/21/2015

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 27, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

On May 26, 2015, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. On July 22, 2015, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was

mailed to Applicant, and it was received on August 20, 2015. Applicant was again put on notice of the security concerns raised by the Government. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's documents, which were then admitted into evidence. In response to the FORM, Applicant submitted additional information, which was also admitted into evidence without objection. The case was assigned to me on October 5, 2015.

Findings of Fact

Applicant admitted all of the SOR allegations except ¶ 1.i. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 34 years old. He married in 2002 and divorced in 2007. He remarried in 2009 and divorced in 2012. He has a six-year-old child from that marriage. Applicant served in the Army from 2002 to 2005 and was honorably discharged. He has worked for his present employer since February 2012. He did not list any periods of unemployment.¹

Applicant signed his security clearance application (SCA) on May 21, 2012. In it he disclosed that he failed to file his 2010 federal and state income tax returns. He stated he intended to file the returns in 2012 and arrange a payment plan. He estimated he owed approximately \$800.²

Applicant admitted in his answer to the SOR that he also failed to file his federal and state income tax returns for 2011 (SOR ¶¶ 1.a, 1.b and 1.c).³ He did not provide proof that he filed his 2010 and 2011 federal and state income tax returns. He stated he had a payment plan to resolve his federal tax debts. It appears he owes federal taxes, but it is unknown what specific tax year he is referring to. The date of inception of the plan and its requirements is not known. In his response to the FORM, he provided a bank statement that showed three monthly payments to the Internal Revenue Service (IRS) of \$316 for October through December 2014, and ten monthly payments of \$316 for January through August 2015. He indicated he paid his delinquent 2010 state tax lien debt alleged in SOR ¶ 1.c (\$3,530), but did not provide documentary proof of payment.⁴

¹ Item 3.

² Item 3.

³ Applicant failed to explain why he did not disclose on his May 2012 SCA that he also did not file his 2011 Federal and state income tax return. Delinquent federal taxes were not alleged. I have not considered these facts for disqualifying purposes, but will consider them when analyzing Applicant's credibility and the whole person.

⁴ Item 2, 3.

Applicant also disclosed in the SCA a debt for rent he owed from July 2005 that had a remaining balance of \$748. He indicated he moved and was unable to pay the amount owed at the time. He said he was working on a payment plan for this debt (SOR ¶1.p). In his answer to the SOR, he stated the debt was paid. He did not provide proof of payment.⁵

Applicant disclosed a debt for a car repossession from 2005 with a balance of \$21,090 that was charged off (SOR ¶ 1.k). He indicated in his SCA that the debt was resolved in 2012. He did not provide documentary proof that it was resolved. In his answer to the SOR, he indicated he planned to set up a plan to pay the account. He did not provide documentary proof of any actions he has taken to resolve the debt.⁶

Applicant disclosed that he had delinquent student loans from 2006 (SOR ¶ 1.m-\$517; ¶ 1.n-\$1,033) that he was unable to pay, but he had begun making payments. In his answer to the SOR, he stated the debt in SOR ¶ 1.m was paid, and he was arranging a plan to pay the debt in SOR ¶ 1.n, which contradicts the comments in his SCA that he had begun paying the debt. He did not provide documentary proof of payment or action he has taken to arrange a payment plan for these debts.⁷

Applicant disclosed he was disputing debts to a telecommunication company (SOR ¶ 1.q-\$1,190) and a credit card company (SOR ¶ 1.i-\$2,495). Both accounts are in collection status. Applicant did not provide documentary proof of actions he has taken to dispute the debts.⁸

Applicant admitted the debt in SOR ¶ 1.d (\$2,919). He indicated in his answer to the SOR that he was making payments to resolve the debt. In his response to the FORM, he provided a document showing he made five payments in 2011; four payments in 2012; nine payments in 2013; two payments in 2014; and two payments in 2015. He has a current balance of \$574.⁹

Applicant indicated in his answer to the SOR that the following debts were paid; SOR ¶ 1.e (\$3,530) state tax lien; SOR ¶ 1.f (\$2,503) education account in collection; SOR ¶ 1.g (\$1,473) mobile phone account in collection; and SOR ¶ 1.l (\$100) debt to local government in collection. He did not provide any documentary proof of payment or resolution of these debts.¹⁰

⁵ Items 2, 3.

⁶ Items 2, 3.

⁷ Items 2, 3.

⁸ Items 2, 3.

⁹ Item 2.

¹⁰ Item 2.

Applicant admitted owing the remaining debts in SOR ¶ 1.h (\$5,992) educational account in collection; SOR ¶ 1.j (\$1,285) charged off educational account; and SOR ¶ 1.o (\$6,184) educational account in collection. He indicated in his answer to the SOR that he planned to set up a repayment plan with the creditors.

The debts alleged in the SOR are supported by entries on credit reports from May 2012 and November 2014.¹¹ Applicant attributed his financial problems to having a child and getting married in 2009, moving in 2010 and again in 2011, and his divorce in 2012.¹²

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 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. 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 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

¹¹ Items 5, 6.

¹² Answer to SOR.

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 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 relating to the guideline 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 the following under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant did not timely file his 2010 and 2011 federal and state income tax returns. He has 14 debts delinquent from at least 2005 totaling approximately \$51,059 that are unpaid or unresolved. Applicant is unable or unwilling to satisfy his debts. He has a history of not meeting his financial obligations. The above disqualifying conditions have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant admitted all of the SOR debts, except one. He failed to provide proof that he filed his 2010 and 2011 federal and state income tax returns. He provided evidence that he made some payments to the IRS, but it is unknown what tax year or years these payments apply to. He has numerous delinquent debts that are unpaid and unresolved. He attributed his financial problems to the birth of his child and marriage in 2009, and moves in 2010 and 2011. His record shows that he has had unpaid bills since at least 2005. I am unable to find his financial problems occurred under unique circumstances and are unlikely to recur. His conduct casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's moves and the birth of his child were conditions that may have been somewhat beyond his control. For the full application of AG ¶ 20(b) he must provide proof that he acted responsibly under the circumstances. Applicant had delinquent debts prior to these events. It has been six years since these events, and he has not provided evidence of acting responsibly in resolving his financial problems. AG ¶ 20(b) has little application.

No evidence was provided that Applicant has received financial counseling. Applicant has made some inconsistent payments toward the debt in SOR ¶ 1.d, but it is not yet resolved. Despite statements that other debts are paid or that he is arranging payment plans, he failed to provide documented proof to support his position. AG ¶ 20(c) has limited application. AG ¶ 20(d) also has limited application to said debt on which he made some inconsistent payments. There is no evidence of good-faith efforts

to repay or resolve the 13 remaining delinquent debts. AG ¶ 20(d) does not apply to them.

Applicant asserted that he disputed certain delinquent debts, but he failed to provide documentary proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. AG ¶ 20(e) does not apply.

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(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 that guideline, but some warrant additional comment.

Applicant is 34 years old. He has had steady employment. He served honorably in the Army. Applicant has a history of financial problems that he has not resolved. He failed to provide substantiating evidence of payment or resolution for delinquent debts that he indicated he had paid. He failed to show he has filed his delinquent federal or state income tax returns. He failed to provide proof of the actions he has taken to arrange payment plans. His financial problems raise questions about his trustworthiness, reliability, and good judgment. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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.q: 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 grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge