



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



In the matter of:)
)
) ISCR Case No. 12-12192
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

05/04/2016

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 15, 2015, 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 June 8, 2015, 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 14, 2015. 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 September 2, 2015. As of November 5, 2015, he had not responded. The case was assigned to me on November 18, 2015. The Government exhibits included in the FORM are admitted in evidence.

Findings of Fact

Applicant is 31 years old. It is unclear whether he is a current employee or a prospective employee of a defense contractor. He has a bachelor's degree that was awarded in 2007. As of 2012, he was married without children.¹

Applicant has not had steady employment. He lost jobs due to lay-offs and loss of contracts. He went through periods of unemployment and underemployment. He vacationed in a foreign country in January 2011 and January 2012.²

The SOR alleges 25 delinquent debts totaling about \$48,000. The debts are listed on a June 2012 credit report, a December 2014 credit report, or both credit reports.³

Seven of the debts alleged in the SOR, totaling about \$37,000, are student loans. Applicant indicated that the five student loans alleged in SOR ¶¶ 1.a through 1.e (\$25,039) were in a current status with the next payment due in June 2015. He provided a June 2015 statement showing that the five loans and four additional loans were not reported as past due. The last payment on the loans was made in September 2013. The balance of the nine loans was \$44,721. Applicant admitted owing the two remaining defaulted student loans alleged in SOR ¶¶ 1.f (\$1,827) and 1.y (\$10,920). He stated that he had not been able to pay the loans because of his unemployment.⁴

Applicant admitted owing the medical debts alleged in SOR ¶¶ 1.h through 1.i (\$424), but he mistakenly thought the debts were traffic citations that he had not received.⁵

The debts alleged in SOR ¶¶ 1.t (\$205) and 1.u (\$105) are traffic citations that Applicant received in 2011. He stated during his August 2012 background interview that he intended to pay one of the tickets in September 2012. The citations are listed by Experian and TransUnion on the June 2012 combined credit report. They do not appear on the December 2014 Equifax credit report. He wrote in his response to the SOR that the debts were paid in 2012 and: "I would request more time to provide official settlement letter from creditor and to have my credit report updated to reflect status." It is unclear whether Applicant was given additional time to respond to the SOR. However,

¹ Items 2, 3.

² Items 1-3.

³ Item 1, 4, 5.

⁴ Item 1, 3-5.

⁵ Item 1, 3, 5.

he submitted his SOR response on June 8, 2015, and he received the FORM on September 2, 2015. He had more than three additional months to submit matters, but he did not submit anything.⁶

Applicant admitted owing the debts alleged in SOR ¶¶ 1.g (cable television account - \$383), 1.p (mail-order music - \$84), and 1.v (payday loan - \$475). He stated that he was unable to pay the cable television account because of unemployment, and he was unable to contact the two other creditors.⁷

Applicant denied owing the \$1,218 judgment alleged in SOR ¶ 1.k. He wrote in response to the SOR that he appeared in court and “satisfied it shortly after.” He did not submit any supporting documentation. The judgment is listed on the December 2014 credit report.⁸

Applicant denied owing the remaining debts alleged in SOR ¶¶ 1.m (credit card - \$470), 1.n (bank overdraft charges - \$191), 1.o (satellite television - \$86), 1.q (utility company - \$131), 1.r (bank - \$3,378), 1.s (credit card - \$617), 1.w (insurance - \$686), 1.x (bank - \$1,341), and 1.y (telecommunications - \$421). The debts are all listed by Experian or TransUnion on the June 2012 combined credit report. None of the debts appear on the December 2014 Equifax credit report. Applicant wrote in response to the SOR that he paid the debts and: “I would request more time to provide official settlement letter from creditor and to have my credit report updated to reflect status.” He did not submit any additional matters. Little else is known about Applicant’s finances.⁹

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 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.

⁶ Items 1, 3-5.

⁷ Item 1, 4, 5.

⁸ Item 1, 5.

⁹ Item 1-5.

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 in this case:

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

Applicant was unable or unwilling to pay his debts. 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;

(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's periods of unemployment and underemployment were circumstances beyond his control. However, he also vacationed in a foreign country in January 2011 and January 2012, and when he was interviewed in August 2012, he had not paid his 2011 traffic citations.

Applicant stated in his response to the SOR that a number of the debts were paid and: "I would request more time to provide official settlement letter from creditor and to have my credit report updated to reflect status." It is unclear whether he was given additional time to respond to the SOR, but he had more than three additional months in which he could have provided documents in response to the FORM. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). Applicant receives little benefit from the fact that the debts are not listed on the 2014 Equifax report because the debts at issue were not reported by Equifax on the 2012 combined credit report; they were reported by Experian or TransUnion.

Applicant had not made any payments on five of the student loans since September 2013, but the student loan servicing agency reported in June 2015 that the

five loans and four additional loans were not past due. Applicant still has to pay those loans, but at this time, those loans are mitigated. There is no proof that any of the other debts are paid or otherwise resolved.

There is insufficient evidence in the written record 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(b) is partially applicable. None of the other mitigating conditions are applicable. I find that financial considerations 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.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a-1.e:	For Applicant
Subparagraphs 1.f-1.y:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge