



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



In the matter of:)
)
) ISCR Case No. 14-00133
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i Garcia, Esq., Department Counsel
For Applicant: *Pro se*

08/05/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On February 28, 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 submitted an undated response to the SOR and requested a hearing before an administrative judge. The case was assigned to another administrative judge on June 12, 2014, and reassigned to me on June 25, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 27, 2014, scheduling the hearing for July 23, 2014. The hearing was convened as scheduled. Government

Exhibits (GE) 1 through 4 were admitted into evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. DOHA received the hearing transcript (Tr.) on August 4, 2014.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He has worked for his current employer since 2001. He seeks to retain a security clearance. He served in the U.S. military from 1980 until he was honorably discharged in 1983. He has an associate's degree. He is married for the third time. He has three adult children from his first marriage.¹

The SOR alleges 12 delinquent debts, a 1999 bankruptcy, and failure to file state and federal income tax returns for tax years 2011 and 2012. Applicant admitted filing bankruptcy and owing all the debts at one point, but he indicated that three of the debts were paid. He admitted that he did not file his tax returns when they were due, but he stated that the returns have now been filed.

Applicant filed Chapter 7 bankruptcy in 1999, and his debts were discharged the same year. He attributed the necessity to file bankruptcy to his 1998 divorce. He married his current wife in 2011. He attributed his recent financial problems to her failed business and maintaining two households for a period. He withdrew money from his 401(k) retirement account to help her business, which contributed to his tax problems.²

Applicant contracted with a debt-management company in about August 2012 to assist in resolving his debts. He pays the company \$112 every two weeks. The company negotiates with his creditors and uses the accumulated funds to settle his debts. He enrolled seven debts from the SOR in the company's debt-resolution plan: SOR ¶¶ 1.b (\$2,862), 1.c (\$1,599), 1.d (\$3,829), 1.e (\$1,981), 1.f (\$625), 1.g (\$793), and 1.i (\$700). The debts alleged in SOR ¶¶ 1.b and 1.e have been settled and paid.³

Applicant admitted owing the debts alleged in SOR ¶¶ 1.h (\$1,121), 1.i (\$1,736), 1.j (\$392), 1.k (\$3,688), and 1.n (\$300). The \$3,688 debt for the deficiency owed on a car loan after the car was repossessed (SOR ¶ 1.k) has been paid through garnishment of Applicant's wages. He stated that he plans to pay the remaining debts.⁴

Applicant had a tax specialist who prepared his income tax returns. She informed him before his 2011 income tax returns were due that she was no longer able to prepare his returns. Applicant stated that his income tax returns then just "slipped through the cracks." He retained a new tax firm, and he filed his 2011 and 2012 state

¹ Tr. at 12-13, 17-19, 33, 34; GE 1.

² Tr. at 16-19, 22-24; Applicant's response to SOR.

³ Tr. at 19-22, 29; Applicant's response to SOR; AE A.

⁴ Tr. at 19, 22-23, 28-29, 38; Applicant's response to SOR; GE 2-4.

and federal income tax returns in about June 2014. He owes the IRS about \$3,700 for tax year 2011 and \$1,500 for 2012. He still owes his state about \$300 for tax year 2008 (SOR ¶ 1.n) and about \$1,500 for tax years 2011 and 2012. His tax company will negotiate payment plans with the IRS and his state. He indicated that the IRS and his state will not consider payment plans until he files his 2013 tax returns. He has extensions for those returns. He anticipates filing his 2013 income tax returns before the extensions expire in October 2014. He has not received financial counseling.⁵

Applicant is a patriotic American who cares about this country. He is proud of his service in the U.S. military and that his work helps save American lives. He donates to the Wounded Warrior Project. He stated that he would never do anything to harm this country.⁶

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.

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

⁵ Tr. at 24-32, 39; Applicant's response to SOR.

⁶ Tr. at 12-13, 16.

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. Three are potentially applicable in this case:

- (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 has a history of financial problems. He filed bankruptcy in 1999. He did not file federal and state income tax returns when they were due for tax years 2011 and 2012. He accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The above disqualifying conditions are applicable.

Conditions that could mitigate 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 1999 bankruptcy to his first divorce, and his recent financial problems were caused by his current wife's failed business. Those events were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

The \$3,688 debt alleged SOR ¶ 1.k has been paid through garnishment of Applicant's wages. He has been paying \$112 every two weeks to a debt-management company since about August 2012. The debts alleged in SOR ¶¶ 1.b (\$2,862) and 1.e (\$1,981) have been settled and paid. Five additional debts are enrolled in the company's debt-resolution plan. There are four remaining debts that are not enrolled in the plan. Applicant filed his 2011 and 2012 federal and state income tax returns, but he did not pay the taxes owed for those years. He also owes his state for tax year 2008.

Applicant's bankruptcy is sufficiently attenuated by the passage of time to no longer generate independent security concerns. The SOR allegations that cover the bankruptcy (SOR ¶ 1.a), the paid debts (SOR ¶¶ 1.b, 1.e, and 1.k), and the failure to file income tax returns (SOR ¶ 1.m) are mitigated.

The debt-resolution plan is a step in the right direction, but Applicant's finances are not significantly improved because he is accruing new tax debt. While he has taken some steps in addressing his financial problems, he is still far from a state of financial stability.

There is insufficient evidence for a determination that Applicant's remaining 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 all 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(c) are not applicable. AG ¶ 20(b) is partially applicable. AG ¶ 20(d) is only applicable toward the debts paid through the debt-resolution plan. 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 my 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 service in the U.S. military and his stable work history. He has had financial problems for years. He has been paying a debt-management company for about two years. However, his finances have not significantly improved because he did not pay his income taxes during that period.

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.b:	For Applicant
Subparagraphs 1.c-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant

Subparagraph 1.m:
Subparagraph 1.n:

For Applicant
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