



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



In the matter of:)
)
) ISCR Case No. 14-00232
)
Applicant for Security Clearance)

Appearances

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

07/24/2014

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 March 14, 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 April 1, 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 June 4, 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 responded

with a memorandum and documents that have been marked Applicant's exhibits (AE) 1 through 4. The case was assigned to me on July 18, 2014. The Government exhibits included in the FORM (Items 4-10) and AE 1 through 4 are admitted without objection.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer since 2007. He seeks to retain his security clearance, which he has held since at least 2008. He served on active duty in the U.S. military from 1990 until he was honorably discharged in 1994. He has two associate's degrees. He is divorced with two minor children from his marriage and an adult child from a relationship before his marriage.¹

The SOR alleges six delinquent debts with balances totaling \$66,176. That amount was based upon a credit report from February 2013. The figure is inflated by a delinquent vehicle loan for \$24,058 (SOR ¶ 1.c). A June 2014 credit report lists the balance on the loan as \$3,832, which is the deficiency owed after the vehicle was repossessed and sold. The corrected total of the six delinquent debts is \$45,954. Applicant denied owing the debts in that his ex-wife was awarded responsibility for the debts in their divorce.²

Applicant's ex-wife filed for divorce in June 2006, but the divorce was not final until June 2012. The ex-wife submitted an income and expense declaration in August 2006. The declaration listed the ex-wife's average monthly gross wages as \$8,000 and Applicant's gross monthly income as \$4,583. The declaration listed 15 debts with balances totaling \$182,000. The debts included two vehicle loans for \$58,000 for a 2005 sports utility vehicle (SUV) and \$53,000 for a 2006 luxury car; three loans for jewelry totaling \$25,500; and ten consumer accounts totaling \$45,500. She listed their total monthly expenses, which included their mortgage loan, timeshare, and payments towards the 15 debts, as \$9,177. All of the creditors alleged in the SOR are listed in some manner as creditors in the income and expense declaration.³

During a settlement conference in February 2007, the parties reached an agreement. Applicant's ex-wife was to receive the house. She was to make an equalization payment to Applicant in the amount of \$100,000. She was to pay \$50,000 to Applicant by the close of the day's proceedings. She was to pay \$27,000 "in the form of debts and obligations to be detailed in judgment including obligations related to 911 call and ambulance transportation." The balance of the \$100,000 (\$23,000) was to be paid by May 2007 from a refinance of the mortgage loan on the house. Applicant's ex-wife was to be awarded the SUV and the luxury car; Applicant was to be awarded their

¹ Items 4, 5.

² Items 3, 6, 8-10; AE 1.

³ Item 3. The creditor named in SOR ¶ 1.a is not specifically named in the income and expense declaration, but a credit card company that subsequently merged with the creditor named in SOR ¶ 1.a is listed in the declaration.

2005 pick-up truck. The ex-wife's attorney was to prepare the agreed-upon judgment for signature by the judge.⁴

The agreed-upon judgment was prepared, but it was not signed by the judge. Applicant retained another attorney who sent a letter to his ex-wife's attorney in May 2011. The attorney wrote that the judgment "was not entered in that there were some discrepancies in the wording and some items were missing." He also indicated their house and timeshare were not addressed in the judgment.⁵ He further wrote:

I have reviewed the transcript and it appears to me that one of the bigger issues is that you stated you would "detail" the specific debts paid by the wife in the Judgment to justify the final settlement figure. I cannot see where the debts were ever set out which means that my client has no idea what was paid by the petitioner. I would request at this time you furnish this office with the exact amount and to whom each debt was paid. My client is still receiving notices from a collection company and if this was one of the debts paid then the company should be notified of their error. At any rate, it is my client's right to know what was paid from the community funds.⁶

In December 2011, Applicant's attorney sent a letter to Applicant stating that he had not heard from the wife's attorney. He stated their only recourse was to "prepare an order as to how we think it should be prepared and submit this to the court."⁷

The judge signed the order and granted the divorce in June 2012. The order contained the clause about the ex-wife paying \$27,000, but except for the "obligations related to 911 call and ambulance transportation," the order still did not specify which debts were to be paid by the ex-wife. Applicant's attorney sent the ex-wife a letter in March 2014 requesting copies of all the bills paid with the \$27,000. There is no indication that he ever received a response.⁸

Applicant's combined credit report was obtained as part of a previous investigation in November 2007. The report did not list any delinquent debts. It showed paid mortgage loans, but it did not show any active mortgage loans. It listed a joint car loan for the 2005 SUV that was awarded to the ex-wife. The balance was listed as \$48,504.⁹ The loan for the 2006 luxury car was listed as paid. There was a joint \$25,025 debt that appears to be the loan for Applicant's pick-up truck. The report listed a joint

⁴ Item 3.

⁵ Item 3.

⁶ Item 3.

⁷ Item 3.

⁸ Item 3.

⁹ This is the loan for the repossessed SUV that formed the basis for SOR ¶ 1.c.

\$8,121 consumer debt and eight individual consumer debts with balances totaling \$63,726.¹⁰

Applicant's combined credit report from February 2013 lists five unsecured debts with balances totaling \$42,122 (SOR ¶¶ 1.a, 1.b, 1.d-1.f). One of the debts is listed as a joint account; the remaining debts are listed as individual accounts. The report listed two additional accounts that were "paid for less than full balance." This is consistent with an IRS Form 1099-C (Cancellation of Debt) received by Applicant that reported a \$9,439 debt was forgiven by the creditor in 2009. The creditor on the 1099-C was one of the creditors listed in the income and expense declaration. The credit report listed a number of accounts as paid and closed.¹¹

Applicant stated that he was unfamiliar with the \$8,339 debt alleged in SOR ¶ 1.b. The account was opened in June 2006, at a time when Applicant was already separated from his ex-wife. In August 2006, his ex-wife listed the account with a \$4,000 balance in the income and expense declaration. The account is listed with a \$479 balance in the November 2007 credit report.¹²

Applicant contacted the creditors for the debts alleged in the SOR and requested information on the accounts. He indicated that he would forward the information to his lawyer and the DOD. He indicated that the creditor for the \$4,628 debt alleged in SOR ¶ 1.f informed him that he was only an authorized user of the account. This is inconsistent with the credit reports that list the debt as a joint account.¹³

Applicant stated that he is living within his means and he is willing to meet his obligations. The loan on his pick-up truck is paid. His two most recent credit reports do not show any accounts with balances other than those accounts alleged in the SOR.¹⁴

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

¹⁰ Item 8.

¹¹ Item 9.

¹² Items 3, 8-10; AE 1.

¹³ Items 3, 8-10; AE 1.

¹⁴ Items 3, 9, 10; AE 1.

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 in this case:

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

Applicant has delinquent debts that he was 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;
- (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 states the debts in the SOR should have been paid by his ex-wife. The debt alleged in SOR ¶ 1.c is for the repossessed SUV that was awarded to his ex-wife. She should have paid that loan. SOR ¶ 1.c is concluded for Applicant. I also accept at face value Applicant's assertion that the \$8,339 debt alleged in SOR ¶ 1.b was accumulated by his ex-wife without his knowledge. SOR ¶ 1.b is concluded for Applicant.

Applicant was unable to establish that he is not liable for the remaining four debts alleged in the SOR. The judgment for his divorce was not entered until June 2012. Even if it is accepted that Applicant relied on the 2007 agreement, except for the 911 call and ambulance, that agreement never stated which debts Applicant's wife would pay. The 2007 income and expense declaration listed three loans for jewelry totaling \$25,500; and ten consumer accounts totaling \$45,500. Even if she paid \$27,000 towards those debts, there would have still been more than \$40,000 in debts to be addressed.

Applicant and his ex-wife appeared to be headed toward financial difficulties before their separation and divorce. They had three vehicles, a house, a timeshare, and extensive consumer debt. Applicant may not have been the spendthrift in the family, as he has not accumulated any new debt since the separation. Nonetheless, he had a responsibility to address accounts that were in his name. He does not know what debts his ex-wife was supposed to pay, which also makes it impossible for me to attribute specific debts to her.

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. There are no applicable mitigating conditions.

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.

Applicant and his ex-wife accumulated a large amount of debt. She clearly should have paid part of their debt, what part remains unclear. The 2007 income and expense declaration lists \$71,000 in jewelry and consumer debts. Whether she paid \$27,000 toward their debts is unknown, but even if she did, someone had to pay the remaining \$44,000 in debts.

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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.c:	For Applicant
Subparagraphs 1.d-1.f:	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