



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



In the matter of:)
)
) ISCR Case No. 14-00714
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

03/11/2015

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 April 25, 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 May 22, 2014, and requested a hearing before an administrative judge. The case was assigned to me on January 8, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 15, 2015, scheduling the hearing for February 11, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through Z, which were admitted without objection. DOHA received the hearing transcript (Tr.) on February 23, 2015.

Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. He has worked for his current employer since August 2013. He is applying for a security clearance. He has a bachelor's degree. He is married with two children, ages 24 and 18.¹

The SOR alleges a federal tax lien of \$15,797 for unpaid taxes (SOR ¶ 1.a), an unpaid \$4,550 judgment (SOR ¶ 1.b), deficiencies owed on car loans after the vehicles were repossessed (SOR ¶ 1.c - \$13,341; SOR ¶ 1.e - \$23,715), and six miscellaneous delinquent debts totaling \$5,875. Each debt was listed on at least one credit report. The SOR also alleges that Applicant filed Chapter 13 bankruptcy in 2003, 2004, 2005, and 2007, and that all the bankruptcies were dismissed.

Applicant discussed his finances and his delinquent debts when he was interviewed for his background investigation in October 2013. He attributed his financial problems to his unemployment from about July 2002 to January 2004, and July 2012 to October 2012. His wife also had periods of unemployment. She has a disability that enables her to work but prevents her from driving. Applicant also incurred funeral expenses when his father passed away last year.²

Applicant fell behind on his mortgage loan payments during his unemployment in 2002 to 2004. In order to save his home from foreclosure, he and his wife filed Chapter 13 bankruptcy. The Chapter 13 bankruptcy was dismissed and refiled several times before it was dismissed for the final time in 2008. Applicant and his wife were dissatisfied with how their attorney managed their bankruptcy. They felt like they could handle their finances without bankruptcy. The house was eventually lost to foreclosure.³

Applicant has not paid his taxes every year as required. The Internal Revenue Service (IRS) filed a \$15,797 tax lien against him in 2007. He testified that he believes he owes about \$35,000 for tax years 2003, 2004, 2007, and 2011. He stated that the IRS agreed to a payment plan, which the IRS estimated will amount to \$712 per month for 58 months. The payment plan is on hold because someone filed a tax return in Applicant's name for 2013. Once that issue is resolved, he will start paying the IRS. The IRS levied about \$3,000 from his wages since July 2014.⁴

¹ Tr. at 25-27, 57; GE 1.

² Tr. at 28-29, 54-57; Applicant's response to SOR; GE 1, 3.

³ Tr. at 27-34; Applicant's response to SOR; GE 2-4.

⁴ Tr. at 34-39, 42-45; Applicant's response to SOR; GE 2-4; AE G.

Applicant's landlord obtained a \$4,550 judgment against him in 2009. Applicant has not made any payments toward the judgment. He stated that he contacted the court for information about the plaintiff. He stated the plaintiff moved to another state, and Applicant has been unable to locate him.⁵

Applicant had two sport-utility vehicles repossessed. The credit reports list balances of \$23,715 and \$12,928 on the loans. Applicant stated that he offered to settle the \$23,715 debt for \$2,371, but the creditor wanted full payment. He offered to settle the \$12,928 debt for \$2,686 through monthly payments of \$206, but the creditor has not accepted the offer.⁶

SOR ¶ 1.f alleges a \$521 delinquent debt. The current balance of the debt is \$948. Applicant accepted an offer to settle the debt for \$660, payable through a \$25 payment followed by two payments of \$317. Applicant made the \$25 payment, but the remaining payments were not due by the date of the hearing.⁷

Applicant agreed to pay the \$1,168 delinquent debt alleged in SOR ¶ 1.g through five monthly payments of \$233. The first payment is due on March 17, 2015.⁸

SOR ¶ 1.j alleges a \$100 unpaid parking ticket. The credit report indicates the ticket was given in 2008. Applicant paid the ticket in May 2014.⁹

Applicant contacted the remaining three creditors, but he does not yet have a resolution for any of the debts. He offered to settle the \$1,247 debt alleged in SOR ¶ 1.d for \$249. He offered to settle the \$614 debt alleged in SOR ¶ 1.i for \$245. The creditors have not accepted either offer.¹⁰

Applicant testified that his finances have improved since he started at his current job, and he plans on resolving all his debts. He has received financial counseling.¹¹

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

⁵ Tr. at 39-42; Applicant's response to SOR; GE 2-4; AE H.

⁶ Tr. at 45-48; Applicant's response to SOR; GE 2-4; AE A, C, I, J, M, N.

⁷ Tr. at 49-50; Applicant's response to SOR; GE 2-4; AE O-Q.

⁸ Applicant's response to SOR; GE 2-4; AE D, R-T.

⁹ Tr. at 53; Applicant's response to SOR; GE 2-4; AE F.

¹⁰ Tr. at 50-53; Applicant's response to SOR; GE 2-4; AE B, E, K, L, U-W.

¹¹ Tr. at 24-25, 55-59; Applicant's response to SOR.

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 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:

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

Applicant accumulated delinquent debts and was unable or unwilling to pay his financial obligations. The above disqualifying conditions are applicable.

Applicant's Chapter 13 bankruptcies do not raise security concerns that are independent of the delinquent debts that are also alleged in the SOR. SOR ¶ 1.k is concluded for Applicant.

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 financial problems to his and wife's periods of unemployment. He also incurred funeral expenses when his father passed away last year. Those events were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant has settlement agreements for a few debts, and he made settlement offers for other debts, but he has only completely resolved one debt: the \$100 parking ticket that he received in 2008. He paid that ticket in May 2014. SOR ¶ 1.j is concluded for Applicant. He estimated his debt to the IRS to be \$35,000 for tax years 2003, 2004,

2007, and 2011. The IRS levied about \$3,000 from his wages since July 2014. He stated that he intends to eventually pay all his debts.

Applicant receives less credit in mitigation for the payments made through garnishment of his wages. See ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010). His recent efforts and payment arrangements also require greater scrutiny. The Appeal Board has held that “intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches.” See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

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. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. The first section of AG ¶ 20(c) (financial counseling) is applicable; the second section (clear indications that the problem is being resolved or is under control) is not 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 my 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.i:	Against Applicant
Subparagraphs 1.j-1.k:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge