



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



In the matter of:)
)
) ISCR Case No. 14-01284
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

01/22/2015

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On May 15, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on July 19, 2014, and requested a hearing before an administrative judge. The case was assigned to me on September 5, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 27, 2014, and the hearing was convened as scheduled on December 2, 2014. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence

without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified and offered exhibits (AE) A through H, which were admitted into evidence without objection. The record was held open for Applicant to submit additional information. Applicant submitted AE I through O, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 15, 2014.

Findings of Fact

Applicant admitted the following SOR allegations: ¶¶ 1.a – 1.d, 1.f – 1.h, and 1.j – 1.k. He denied ¶¶ 1.e and 1.i. These admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 46-year-old employee of a defense contractor. He has worked for various contractors, performing similar duties, since 2007. He has a master's degree. He is separated from his wife and they have three children. He pays the living expenses for his wife and youngest child of about \$800 a month, but there is no formalized support agreement. He has been separated since 2007. He retired, in the paygrade of E-6, from the Air Force in 2007, after 20 years of service. He has held a security clearance since 1987.¹

The SOR alleges 10 delinquent debts and Applicant's failure to file his 2012 federal income tax return. The total debt is in excess of \$60,000. The debts were listed in various credit reports from August 2013, May 2014, and August 2014.²

Applicant's financial problems arose between 2007 and 2010. He retired from the Air Force and soon was separated from his wife and children who moved to a separate location. He stopped paying his debts during this time period. Later, when he tried to reestablish payments to the creditors, he believed he was so far behind in payments that he "just gave up and said I'm just not going to do it anymore." He did nothing further regarding the debts until he received the Government's set of interrogatories requesting financial information in December 2013. In June 2014, he employed a debt relief company (DRC) to assist him in negotiating settlement plans and paying his debts. He pays the DRC \$440 per month, which is then put into an account to accumulate a balance that will later be used to pay creditors who have agreed to settle the debt for a lesser amount. Applicant paid five non-SOR-related debts in 2013 and 2014 in the approximate amount of \$1,378. The status of the SOR-related debts is as follows:³

¹ Tr. at 5, 23, 36, 38, 40; GE 1.

² GE 3-5.

³ Tr. at 61-63; GE 2; AE B.

SOR ¶ 1.a (credit card \$8,351):

The last action on this collection account was in April 2010. The DRC is attempting to negotiate a settlement of this account. It remains unpaid. This debt is unresolved.⁴

SOR ¶ 1.b (credit card \$5,564):

The last action on this collection account was in December 2007. The DRC negotiated a settlement of this account for \$3,935. Applicant failed to present evidence showing payment of the settlement amount. This debt is unresolved.⁵

SOR ¶ 1.c (credit card \$2,401):

The last action on this collection account was in April 2008. The DRC negotiated a settlement of this account for \$1,200. Applicant failed to present evidence showing payment of the settlement amount. This debt is unresolved.⁶

SOR ¶ 1.d (credit card \$1,099):

The last action on this collection account was in January 2008. The DRC is attempting to negotiate a settlement of this account. It remains unpaid. This debt is unresolved.⁷

SOR ¶ 1.e (credit card \$9,799):

The last action on this collection account was August 2008. Applicant admitted using this credit card and incurring a balance of approximately \$5,000 to the original creditor. In June 2014, he attempted to locate the current debt-holder, but has been unable to do so. This debt is unresolved.⁸

SOR ¶ 1.f (repossessed vehicle \$7,988):

The date of the last action on this account was September 2008. Applicant admitted that he was a cosigner for his wife on a vehicle loan. When she stopped paying, he became liable. The DRC is attempting to negotiate a settlement of this account. It remains unpaid. This debt is unresolved.⁹

⁴ Tr. at 44; GE 3; AE B-C.

⁵ Tr. at 44; GE 3; AE B-C, M.

⁶ Tr. at 46; GE 3; AE B-C, N.

⁷ Tr. at 46; GE 3; AE B-C.

⁸ Tr. at 46-47; GE 3; AE D.

⁹ Tr. at 48; GE 3; AE B-C.

SOR ¶ 1.g (consumer debt \$13,034):

This account was charged off by the creditor in September 2008. Applicant stated he was to receive an IRS Form 1099-C, indicating a cancellation of debt, from the credit holder. He did not produce evidence of the debt cancellation. This debt is unresolved.¹⁰

SOR ¶ 1.h (consumer debt \$5,259):

Applicant's last action on this debt was in February 2008. The debt was charged off by the creditor in October 2012. Applicant entered into a payment plan with the creditor in July 2014 to settle this debt. He provided evidence of payment of \$275 per month from July through December 2014. This debt is being resolved.¹¹

SOR ¶ 1.i (consumer debt \$4,642):

Applicant's last action on this account was in June 2007, when it was charged off by the creditor. Applicant claims he paid this account and offers proof that he disputed it with a credit reporting service. The dispute was resolved in his favor and the account was deleted from his credit report. This debt is resolved.¹²

SOR ¶ 1.j (consumer debt \$2,250):

Applicant provided documentation showing that he reached a settlement in the amount of \$1,125 with this creditor, which he paid in June 2014. This debt is resolved.¹³

SOR ¶ 1.k (2012 tax return):

Applicant admitted failing to timely file his 2012 federal tax return. His reason was that initially he did not know how to do his taxes. They became overwhelming for him so he gave up trying to complete them. He then sought the services of a tax preparation company. He claims this company did nothing but hold on to his information, but it did not file a return for him. In January 2014, he concluded his business with this tax company and hired a successor company in August 2014 to file his tax returns. His 2011 and 2012 federal income tax returns were filed in September 2014. According to those two returns, Applicant owes the IRS approximately \$20,000 in unpaid taxes.¹⁴ He

¹⁰ Tr. at 48-49; GE 3.

¹¹ Tr. at 50-51; Answer; GE 3; AE E, O.

¹² Tr. at 51; AE F.

¹³ Tr. at 51-53; AE F.

¹⁴ Since the non-payment of his taxes and the failure to file his 2011 tax return were not specifically alleged in the SOR, I will not consider this evidence as disqualifying conduct. I will consider

has not paid his delinquent tax amount, but he plans to set up a payment plan with the IRS.¹⁵

According to his personal financial statement completed in February 2014, Applicant listed his net monthly income as \$5,600 and his expenses and obligations as \$2,703, but this excludes the \$800 monthly amount he pays to his estranged wife. This total leaves him with a remainder of \$2,097.¹⁶

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 that 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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

the evidence for determining the applicability of any mitigating circumstances and when I weigh the whole-person factors.

¹⁵ Tr. at 68-70, 72; AE G, K.

¹⁶ GE 2.

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 about 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 Executive Order 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 as follows:

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 . . . income tax returns as required. . . .

Applicant had ten delinquent debts and failed to file his 2012 federal income tax return. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 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's debts are recent, multiple, and cast doubt on his reliability, trustworthiness, and good judgment. His failure to file his 2012 tax return until more than a year after it was due also shows a lack of reliability, trustworthiness and good judgment. AG ¶ 20(a) is not applicable.

Applicant's separation from his wife can be considered a condition beyond his control. Most of the debt was placed in collection status or written between 2007 and 2010, yet Applicant did not take any meaningful action to address the debt until 2014 when it became an issue concerning his security clearance. Even though he hired DRC to negotiate settlements on five accounts, no proof of payments was forthcoming. He has resolved two debts (SOR ¶¶ 1.j and 1.i), is resolving one debt (SOR ¶ 1.h), and resolved five debts outside the SOR. Overall the record evidence does not support that Applicant's actions were responsible under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant sought financial counseling through his affiliation with DRC. Although the evidence supports that some of his debts are resolved or being resolved, the higher-balanced debts are still unresolved. Additionally, his tax obligations have not been addressed. Evidence of good-faith efforts to pay or resolve the debts is lacking.¹⁷ AG ¶ 20(c) and ¶ 20(d) partially apply.

¹⁷ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the predecessor mitigating condition to AG ¶ 20(d)], an Applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the Applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an Applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [AG ¶ 20(d)].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

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 relevant 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 military service and the circumstances by which he became indebted. However, I also considered that he has made little effort to resolve his financial situation until recently. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, 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.g:	Against Applicant
Subparagraphs: 1.h – 1.j:	For Applicant
Subparagraph: 1.k:	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.

Robert E. Coacher
Administrative Judge