



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



In the matter of:)	
)	
)	ISCR Case No. 14-01807
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

10/07/2015

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On July 11, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted 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).

In an undated response, Applicant answered (Answer) the SOR, and requested a hearing before an administrative judge. The case was assigned to me on May 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

June 6, 2015, and the hearing was convened as scheduled on July 13, 2015. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Department Counsel's exhibit list was marked as HE I. Applicant testified and did not offer any exhibits at the hearing. The record was held open for Applicant to submit additional information, and he submitted exhibits (AE) A through D, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on July 22, 2015.

Findings of Fact

In Applicant's Answer, he admitted all the allegations, except for SOR ¶ 1.f, which he denied. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 59 years old. He has been divorced since 2001. He has three adult children. He has worked as an employee for different federal contractors in the same position for 15 years. He is a high school graduate who has taken some technical courses. He retired from Air Force in 2001 as a master sergeant (E-7) after 24 years of honorable service.¹

The SOR alleged that Applicant had five tax liens entered against him in the amounts of \$2,083, \$1,767, \$5,176, \$10,121, and \$44,492 (SOR ¶¶ 1.a-1.e). It further alleged he owed on three collection accounts in the amounts of \$251, \$15,291, and \$2,756 (SOR ¶¶ 1.f-1.h). These allegations are supported by Applicant's admissions in his security clearance application, his Answer, and by credit reports from October 2012, February 2014, and June 2014.²

Applicant stated his financial problems trace back to his divorce and retirement from the Air Force, which both occurred in 2001. As a result of the divorce, he was ordered to pay \$1,000 per month in child support. Additionally, his wife was awarded \$638 per month as her portion of his military retirement. He made all these payments through the years. His child support ended in September 2014 when his youngest child reached majority.³

Applicant admitted that he owed federal tax debts for several years (2001–2005). He neglected to have the proper amount of federal taxes withheld when he retired from the Air Force and began civilian employment. The IRS filed the liens for the delinquent taxes. In January 2012, he began making payments from his retirement account toward

¹ Tr. at 5, 22-23, 30-31, 42; GE 1.

² SOR ¶ 1.h alleges the amount of \$2,756, which Applicant admitted. Documentary evidence from the credit reports only supports a debt amount of \$1,600. I am amending this allegation to state the amount of \$1,600 to conform to the proof in the record. See GE 2-4.

³ Tr. at 24-26, 42.

the tax debts. He continues to make monthly payments of \$600 and has made 44 payments for a total of \$26,000. He did not have any documentation showing the current status of his IRS debt.⁴

The collection account for \$251 (SOR ¶ 1.f) is a telecommunication debt. Applicant provided documentation showing that he paid this debt in April in 2014. This debt is resolved.⁵

The collection account for \$15,291 (SOR ¶ 1.g) is a credit card account. He testified that he attempted to trace the collection service history to pay the account, but made no progress. His post-hearing submissions included information that this debt was sold to a subsequent collection service and has a current balance of \$16,820. He also presented the front side of a check showing a \$50 payment on July 28, 2015. There is no indication that the check was processed. No terms of the payment arrangement with this collection service were included. This debt is unresolved.⁶

The collection account for \$1,600 (SOR ¶ 1.h) is a credit card account. He testified that he made no efforts to resolve this account. His post-hearing submissions included information showing a payment of \$50 to a different named collection service. He did not explain if this was the current debt holder. This debt is unresolved.⁷

Applicant stated he is current on his recent debts and that he has between \$1,100 and \$1,200 remaining every month after paying all expenses. He also stated he received some financial counseling from a friend in the past and his post-hearing documents indicated he was seeking further counseling.⁸

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 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching

⁴ Tr. at 36, 38, 40; AE B.

⁵ Tr. at 57; Answer.

⁶ Tr. at 34, 59; AE A, D.

⁷ Tr. at 61; AE C.

⁸ Tr. at 49, 55; AE A.

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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an 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 Executive Order 10865 provides that 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

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following apply:

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

Applicant has delinquent federal tax debts and collection accounts that remain unpaid or unresolved. I find both the disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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 tax debts are recent and remain unresolved. He has made some strides to address his tax obligations by making regular monthly payments to the IRS. However, evidence of overall progress on resolving the tax debt was not provided. He still has large balances on two of the collection accounts. His past financial history casts doubt on his current reliability, trustworthiness, and good judgment. I find mitigating condition AG ¶ 20(a) does not apply.

Applicant blames his inability to pay his taxes on his divorce and military retirement. His divorce is a condition beyond his control. However, Applicant must also act responsibly under the circumstances. It has been 14 years since his divorce, which is ample time to recover from its financial impact. Although he set up a payment plan with the IRS to pay his past taxes in 2012, it is unknown whether he is making progress towards resolving his overall tax debt. Two of the three collection debts remain unaddressed. AG ¶ 20(b) partially applies.

Applicant presented some evidence of financial counseling and that Applicant has begun to address his federal tax issues, but it is unknown how much progress he is actually making. There is some evidence that he has made a good-faith effort to address his tax issues, but not the two large collection accounts. I find AG ¶¶ 20(c) and 20(d) partially apply.

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 the 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 guideline 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 considered Applicant's military service. On the other hand, I also considered that he failed to honor his obligation to pay his federal taxes and other debts for an extended period of time. He is paying monthly payments to the IRS, but an unknown balance still exists. His inability to make any progress toward paying his collection debts shows a lack of reliability, trustworthiness, and good judgment.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g – 1.h:	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