



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



In the matter of:)	
)	
)	ISCR Case No. 14-01853
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

08/17/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On August 22, 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 action was taken 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 DOD on September 1, 2006.

Applicant answered the SOR on September 23, 2014, and requested a hearing before an administrative judge. The case was assigned to me on June 12, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 19,

2015. I convened the hearing as scheduled on July 30, 2015. The Government offered exhibits (GE) 1 through 4. GE 1, 3, and 4 were admitted into evidence without objection. GE 2 was withdrawn. Applicant testified and offered Applicant Exhibits (AE) A through K, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on August 7, 2015.

Findings of Fact

Applicant admitted all of the allegations in SOR. His admissions were incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 58 years old. He is a college graduate. He did not serve in the military. He married in 1979 and divorced in 2009. He has two grown children.¹

Applicant worked for the federal government from 1979 to 2007, when he was terminated. He challenged the termination through the appropriate procedural and legal processes, including appealing the case in the circuit court. His termination was upheld. The loss of employment and legal fees severely impacted his finances. During this four year process, he supported himself with his savings, unemployment benefits, financial assistance from family and friends, and some contract work he obtained. He also became a personal trainer and earned some income to pay his monthly expenses. He indicated that because he did not have military service and therefore a Veteran's Preference, he had difficulty competing for certain employment opportunities. In addition, he indicated he surpassed age requirements in his field of expertise. He was unable to qualify for educational loans. In 2012, he moved to a new state because he believed there were more opportunities, but he was unable to find consistent work. He has held his current job for about five months, but essentially has been unemployed since 2007, except for sporadic part-time employment from 2012 to 2015. He does not have medical insurance.²

The judgment in SOR ¶ 1.b (\$5,233) was paid in August 2007 and is resolved. Applicant paid the debt in SOR ¶ 1.m (\$865) for unpaid 2008 state taxes. Applicant provided documents showing the debts are resolved. He testified the debt in SOR ¶ 1.h (\$27) owed to a communications company was paid telephonically, but he was unable to retrieve a receipt.³

The debt in SOR ¶ 1.f (\$9,378) is for a mortgage loan on property Applicant owns. He purchased the property in 2006. At some point, he contacted the mortgage creditor and advised it he could not make the monthly payment. He negotiated a modification to the loan to prevent foreclosure. He was able to transfer the delinquent

¹ Tr. 26-28.

² Tr. 28, 74-83; Answer to SOR.

³ Tr. 40-42, 44; Answer to SOR.

amount into the modified loan. His current monthly payments are \$160. His current credit report shows the account is being paid as agreed. Applicant does not want to sell the property because he wants to leave it to his children. He estimated it is worth about \$18,000 to \$19,000.⁴

The debt in SOR ¶ 1.k (\$99,845) is for a condominium Applicant owned. SOR ¶ 1.l (\$6,053) is the second mortgage on it. He admitted he was unable to pay the loans, and it was foreclosed. At some point, the city where the property is located condemned it. Applicant contacted the mortgage lender about a year ago and was advised his loans were in collection. He has not resolved the debts or provided current information regarding the status of the property.⁵

The remaining seven debts alleged in SOR ¶¶ 1.a (\$838), 1.c (\$720), 1.d (\$3,127), 1.e (\$1,015), 1.g (\$11,962), 1.i (\$675), and 1.j (\$125) are not paid or resolved. Many of them have been delinquent for several years.⁶

Applicant explained money has been tight since 2007. He has lived in his car or slept on someone's couch. He has been on food stamps. He does not have enough money to file bankruptcy. He does not want to sell the real property he owns. He wants to work, but cannot find a job. He wants to pay his debts, but does not have the money.⁷

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 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.

⁴ Tr. 54-60, 88-92; GE 4, AE D, E.

⁵ Tr. 46, 63-74; AE K.

⁶ Tr. 44, 46, 50-51, 53, 60-62; Answer to SOR; GE 3 and 4 confirm Applicant's debts.

⁷ Tr. 81-88.

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 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 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

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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant has nine delinquent debts totaling approximately \$124,360 that he has been unable or unwilling to pay or resolve for several years. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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 was terminated from his job in 2007. He challenged the termination and lost. He used his financial resources for attorney's fees and living expenses for the years following the termination. He has been unable to find steady employment. His delinquent debts are numerous and unpaid. AG ¶ 20(a) does not apply.

Applicant's job loss, subsequent legal challenges, and lengthy unemployment or underemployment history severely affected his finances and ability to pay his delinquent debts. These are conditions that were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant owns land that is worth approximately \$18,000 to \$19,000 that he does not want to sell. He has this financial resource that would permit him to pay some of his delinquent debts and perhaps help him to become more financially stable, but has chosen not to pursue it. I find AG ¶ 20(b) only partially applies.

There is no evidence Applicant received financial counseling. There is insufficient evidence to conclude Applicant's financial problems are resolved or under control. AG ¶

20(c) does not apply. He resolved the debts in SOR ¶¶ 1.b, 1.f, 1.h, and 1.m. AG ¶ 20(d) applies to these debts.

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.

Applicant is 58 years old. He was terminated from his job in 2007 and challenged the termination for years, exhausting his financial resources. He has been unable to find a job. He has accumulated numerous delinquent debts that are unpaid and unresolved. Applicant owns real property that despite his dire financial situation he is unwilling to sell to resolve some of his delinquent debts. His financial problems are likely to continue. 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 failed to mitigate the security concerns arising under the financial considerations guideline.

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

Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.l:	Against Applicant
Subparagraph 1.m:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge