



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



In the matter of:)	
)	
)	ISCR Case No. 14-01973
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2015

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On June 19, 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. DOD CAF acted under Executive Order (EO) 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).

Applicant answered the SOR on October 27, 2014, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on February 18, 2015. The evidence included in the FORM

is identified as Items 1-6 and is admitted into the record. The FORM was mailed to Applicant who received it on February 27, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted Items 7-9, which were admitted into the record. The case was assigned to me on April 16, 2015.

Findings of Fact

In Applicant's answer to the SOR, he admitted ¶¶ 1.a – 1.d and 1.g – 1.i. He denied ¶¶ 1.e – 1.f and 1.j. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 45 years old. He is divorced from his first wife and separated, pending divorce, from his second wife. He has three children ages 20, 19, and 17. He holds an associate's degree. He briefly served in the USMC, but was released from service with an entry level discharge.¹

The SOR alleges Applicant failed to file and pay his federal and state income taxes for year 2009 and that he owes delinquent taxes in the amount of approximately \$9,336 (SOR ¶¶ 1.a, 1.b). The SOR lists eight delinquent debts totaling \$6,842. The debts include three student loan accounts (SOR ¶¶ 1.c, 1.d, and 1.g) and five consumer debts (SOR ¶¶ 1.e, 1.f, and 1.h – 1.j). The debts and the delinquent taxes are supported by credit reports from January 2014 and February 2015 and by Applicant's interview with a defense investigator in January 2014.²

The status of the taxes and debts is as follows:

SOR ¶¶ 1.a, 1.b:

Applicant admitted that he failed to file his 2009 federal tax return. Department Counsel conceded that since Applicant was a resident of a state that did not have a state income tax, he had no obligation to file a state tax return. Applicant provided documentation showing that he filed his federal return and set up a payment plan with the Internal Revenue Service (IRS) to pay his 2009 federal taxes. He completed his payment plan in March 2015. These tax issues are resolved.³

¹ Items 3-4.

² Items 4-6.

³ Items 2, 4, 7-8.

SOR ¶¶ 1.c, 1.d, 1.g:

Applicant incurred these three student loan accounts in approximately 2001. He failed to voluntarily pay the loans. In October 2012, a garnishment order was issued against his wages in the amount of approximately \$200 per pay period. He did not supply copies of his earnings statements to show that the garnishment took place. He claims that these student loan accounts were paid in full, but failed to supply any corroborating evidence.⁴ These debts are unresolved.⁵

SOR ¶¶ 1.e, 1.f:

The January 2014 credit report shows these are collection accounts and with balances of \$2,048 and \$653. The date of last activity for SOR ¶ 1.e was May 2011 and the date of the balance was June 2011. The date of last activity and the date of the balance SOR ¶ 1.f was February 2009. Applicant claimed he paid ¶ 1.e, but did not offer documentary evidence of payment. He claimed no knowledge of ¶ 1.f. These debts are unresolved.⁶

SOR ¶¶ 1.h, 1.i:

Applicant admitted both of these debts, but claimed they have been paid. He failed to offer documentary evidence showing payment. These debts are unresolved.⁷

SOR ¶ 1.j:

Applicant denied knowledge of this debt. The January 2014 credit report shows account #39025691 in the amount of \$274 as having a date of last action and date of the balance as August 2013. This is a telecommunications account. This debt is unresolved.⁸

Applicant did not provide any information about his current financial status or a budget. There is no evidence that he sought financial counseling.⁹

⁴ In his FORM response (Item 7), Applicant asked for more time to submit a letter from the student loan creditor showing the debt was paid in full. Applicant had plenty of time to gather supporting evidence to show his student loan payments, but he failed to produce anything after January 2014, when he was interviewed by an investigator, or in October 2014 when he submitted his SOR answer, or after February 2015 when he received a copy of the FORM. Since he failed to show good cause, his request is denied.

⁵ Items 2, 7-8.

⁶ Items 2, 5.

⁷ Items 2, 5.

⁸ Items 2, 5.

⁹ Items 2, 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.

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 potentially apply:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file Federal . . . income tax returns as required

Applicant has delinquent debts that remain unpaid or unresolved. He also failed to file and pay his federal income taxes for 2009. I find all 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;

(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 debts 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's debts are recent and remain unresolved. He did not provide sufficient evidence to show that financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant did not present evidence that the debts were due to circumstances beyond his control. I find AG ¶ 20(b) does not apply. Applicant presented no evidence of financial counseling. He presented evidence that he filed and completely paid his 2009 federal income taxes. These tax issues have been resolved. However, the remaining debts are unresolved. I find AG ¶ 20(c) applies to SOR ¶¶ 1.a and 1.b., but not to the remaining allegations. AG ¶ 20(d) does not apply. He failed to supply documentary evidence to show that he paid any of the non-tax debts. He also failed to document his dispute of SOR ¶¶ 1.e, 1.f, and 1.j. AG ¶ 20(e) does not 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. Applicant has not shown a track record of financial stability.

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.b:	For Applicant
Subparagraphs 1.c – 1.j:	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