



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



In the matter of:)
)
) ISCR Case No. 14-01974
)
)
Applicant for Security Clearance)

Appearances

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

02/12/2015

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 2, 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).

Applicant answered (Answer) the SOR on July 25, 2014, and requested a hearing before an administrative judge. The case was assigned to me on September 17, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of

hearing on October 17, 2014, and the hearing was convened as scheduled on December 4, 2014. 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 offered exhibits (AE) A-1 through A-12, which were admitted into the record without objection. The record was held open for Applicant to submit additional information, and he submitted AE B through H, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 17, 2014.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. 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 47 years old. He is married for the second time and has five adult children (including two step-children). He has worked for his current employer, a defense contractor, for twelve years. He is a high school graduate who has taken some technical courses. He has not served in the military, but has previously held a security clearance.¹

The SOR alleged that Applicant failed to pay his federal income taxes for the period 2009 through 2012 (SOR ¶ 1.a) and that he owed approximately \$937 (2009), \$3,823 (2010), \$2,611 (2011), and \$950 (2012) for those years (SOR ¶¶ 1.b – 1.e). It further alleged he owed on two collection accounts in the amounts of \$1,934 and \$185. These allegations are supported by Applicant's admissions in his security clearance application, his Answer, and by a credit report from November 2013. The allegation in SOR ¶ 1.a is inherent to the allegations in SOR ¶¶ 1.b – 1.e and is duplicative. As such, I find in favor of Applicant on that allegation.²

Applicant has had financial problems dating back to 2003. Those past issues included filing for Chapter 7 bankruptcy in 1994, having his wages garnished for child support arrearages in the amount of \$23,628, and having a lien filed against him in 1995 for unpaid federal taxes in the amount of \$18,412.³

Applicant admitted that has owed federal tax debt for several years (2004 – 2013). He attributed the debt to the high amount of rent he was paying and not having any deductions, which could offset his income. He recently purchased a home that will have a monthly mortgage payment of approximately \$2,880, which is less than his

¹ Tr. at 4-5, 19-20; GE 1.

² GE 1, 3; Answer.

³ Since these actions were not specifically alleged in the SOR, I will not consider this evidence as disqualifying conduct. I will consider the evidence for determining the applicability of any mitigating circumstances and when I weigh the whole-person factors.

monthly rent of approximately \$3,005. Additionally, when he married his second wife in 2007, his federal taxes increased. More recently, his wife's income decreased from \$80,000 per year to approximately \$50,000 per year. His income is approximately \$80,000 annually. He did not pay the federal taxes at the time they were due because he did not have the money to do so.⁴

Applicant presented documentary evidence showing that he set up a payment plan with the IRS and has been making consistent payments since 2007. He began by making monthly payments of \$400 (Aug 2009 to May 2010, July 2011 to November 2011, Feb 2012 to May 2012, Aug 2012 to May 2013), but he reduced the monthly payments to \$200 in December 2013 and is currently paying that amount. He testified that he was unsure of the total amount he owed the IRS. His post-hearing documents from the IRS indicated that he owed \$1,585 for tax year (TY) 2008 (not alleged); zero for TY 2009; \$4,037 for TY 2010; \$2,669 for TY 2011; \$2,777 for TY 2012; and \$4,299 for TY 2013 (not alleged). Additionally, Applicant knows that he and his wife owe at least \$12,000 on his 2014 federal tax return due to his wife taking funds out early from her 401k retirement account. Discarding the amounts owed for 2008, 2013, and 2014 (not alleged and not considered as disqualifying conduct), the total Applicant owed the IRS for the SOR-related debts as of December 2014 was \$9,483, which is more than the aggregate of the taxes owed as stated in the SOR.⁵

The collection account for \$1,934 (SOR ¶ 1.f) resulted from Applicant's use of a company credit card from 2002. He acknowledged that he failed to pay the debt at the time it was owed and he does not have the funds to pay it now. He stated there was some confusion about the responsibility for the debt because it was issued by one contractor-company, but when a follow-on contractor-company took over the business, it refused to reimburse him for the costs of his business-related expenses. He did not provide supporting documentation. This debt is unresolved.⁶

The collection debt for \$185 (SOR ¶ 1.f) is a consumer debt. Applicant provided documentation showing that he attempted to resolve this debt with the creditor, but his written inquires went unanswered. He also provided evidence that the company is out of business. This debt is resolved.⁷

Applicant's supervisor testified that he has supervised Applicant since 2008. He interacts with him on a daily basis. He believes Applicant is trustworthy, honest, has integrity, and he recommends him for a security clearance.⁸

⁴ Tr. at 21-22, 26, 29-30, 35, 40-41, 56; AE A-2 to A-4, A-12.

⁵ Tr. at 36-40, 42, 52, 56; AE B-G; Answer.

⁶ Tr. at 45, 48; GE 3; Answer.

⁷ Tr. at 43-44; GE 3; Answer.

⁸ Tr. at 61, 63.

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 apply:

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

Applicant has delinquent federal tax debts and a collection account 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, he has not made any progress on resolving the overall debt. He still owes the IRS more now than he did when the SOR was written and that amount is exclusive of the amount he owes for 2008, 2013, and 2014. 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 getting married, having to pay rent, and because his wife's income decreased. Only the last of those reasons is a condition beyond his control. Applicant must also act responsibly. Here, although he set up a payment plan with the IRS to pay his past taxes, he is not making progress towards resolving his overall tax debt and he is incurring new tax debt (2013 and 2014) that he cannot pay. AG ¶ 20(b) partially applies.

Applicant presented no evidence of financial counseling, and while there is some evidence that Applicant has begun to address his federal tax issues, he has incurred new tax debt for the last two years. He has made minimal progress in resolving his federal tax issues. Evidence that he has made a good-faith effort to address his tax issues is lacking. He also failed to resolve a collection credit card account from 2002. I find AG ¶¶ 20(c) and 20(d) do 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. I considered Applicant's supervisor's testimony about his positive character traits. 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 a significant balance remains and for the last two years he has incurred new tax debt. His inability to make any progress toward paying his federal taxes 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.b:	For Applicant
Subparagraphs 1.c – 1.f:	Against Applicant
Subparagraph 1.g:	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.

Robert E. Coacher
Administrative Judge