



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



In the matter of:)
)
) ISCR Case No. 14-02048
)
)
Applicant for Security Clearance)

Appearances

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

03/20/2015

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 July 3, 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 July 22, 2014, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on January 20, 2015. The FORM was mailed to Applicant

who received it and sent back a signed receipt to the Defense Office of Hearings and Appeals (DOHA) that was received on February 2, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted exhibits (AE) A-1 through A-12, which were admitted into the record. The case was assigned to me on March 11, 2015.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations except for ¶ 1.b. The 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 46 years old. He is married, but separated from his wife and has three adult children. He has worked for his current employer since October 2008. He possesses a high school diploma and has taken some college courses. He retired from the Army in 2008 after 20 years of service.¹

The SOR lists a dismissed Chapter 13 bankruptcy from 2009 (SOR ¶ 1.a) and seven delinquent debts totaling \$16,207. The debts include a medical debt (SOR ¶ 1.b); and other past-due credit card or consumer debts (SOR ¶ 1.c - ¶ 1.h). The SOR also alleges Applicant failed to file and pay his federal income taxes for years 2009 through 2012 and that he owes delinquent taxes in the amount of approximately \$10,500 (SOR ¶ 1.i). The bankruptcy, the debts, and the delinquent taxes are supported by credit reports from January 2014, May 2014, and January 2015 and by Applicant's interview with a defense investigator in January 2014.²

Applicant explained that his financial difficulties arose after his wife was severely injured in an accident in 2006. The accident left his wife unable to work. He then only had one income to pay his bills and got behind on his payments. He sought bankruptcy protection in 2007 and was making \$1,700 monthly payments under the bankruptcy plan through early 2009. At that point, he was unable to make the payments and his bankruptcy was dismissed. Applicant's explanation for not filing his federal taxes for years 2009 to 2012 is that he and his wife cannot discuss the issue without arguing and therefore nothing was done about the taxes.³

While serving in the Army in 2004, Applicant had financial issues that caused the issuance of a "warning notice." The Army granted his security clearance with a warning

¹ Item 3.

² Items 1, 6-9.

³ Item 6.

that subsequent unfavorable information would lead to a possible suspension of his clearance.⁴

The status of the debts and taxes is as follows:

SOR ¶ 1.b:

The January 2014 credit report shows this medical account #1091894775 as being in a collection status with a balance of \$2,622. The date of last activity was August 2010 and the date of the balance was August 2011. Applicant denied owing this medical debt in both his security clearance interview and his answer to the SOR. He claimed the debt was not his. He failed to provide documentary evidence disputing the debt. This debt is unresolved.⁵

SOR ¶ 1.c:

The January 2014 credit report shows this debt as a collection account #2630425 with a balance of \$1,867. The date of last activity was May 2010 and the date of the balance was December 2013. In July 2014, Applicant admitted this debt and stated he would pay it in the next two months. He did not offer documentary evidence of payment. This debt is unresolved.⁶

SOR ¶ 1.d:

The January 2015 credit report shows this as a past-due rent debt with a balance of \$3,138. The date of last activity was November 2013. In July 2014, Applicant admitted this debt and stated he would resolve it. He did not offer documentary evidence of payment. This debt is unresolved.⁷

SOR ¶¶ 1.e – 1.f:

The January 2014 credit report shows these as collection accounts #2600553 and # 571584 with balances of \$521 and \$1,680. The date of last activity was January 2010 and the date of the balance was January 2014 for # 2600553. The date of last activity was March 2010 and the date of the balance was January 2014 for # 571584. In July 2014, Applicant admitted these debts and stated he would pay them in the next

⁴ 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. See Item 10.

⁵ Items 4, 6, 9.

⁶ Items 4, 9.

⁷ Items 4, 7.

month. He did not offer documentary evidence of payment. These debts are unresolved.⁸

SOR ¶¶ 1.g – 1.h:

The January 2014 credit report shows account #26267566550905067 in the amount of \$3,346 as included in Applicant's 2007 Chapter 13 bankruptcy. This bankruptcy was dismissed in 2009. The date of last activity was June 2007 and the date of the balance was December 2013 for this debt. In July 2014, Applicant claimed that this account "now reads Paid As Agreed on my credit file." He failed to supply documentary evidence supporting his assertion. The same credit report shows account #2641268 as a charged-off account in the amount of \$2,993. The date of last activity was June 2007 and the date of the balance was July 2013. In July 2014, Applicant claimed that this account "now reads Paid As Agreed on my credit file." He failed to supply documentary evidence supporting his assertion. These debts are unresolved.⁹

SOR ¶ 1.i:

Applicant provided documentary evidence that he filed his federal taxes for years 2009 through 2013 sometime in 2014. That same evidence shows that he owes over \$55,000 in taxes for those years. He entered into an agreement (terms not included in the evidence) to pay \$500 monthly to the IRS on his tax debt. He offered evidence showing he made one \$500 payment in January 2015. Despite this payment, because of the penalty and interest charges, Applicant's tax balance went up rather than down.¹⁰

Applicant did not provide any information about his current financial status or a budget. There is no evidence that he sought financial counseling.¹¹

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

⁸ Items 4, 9.

⁹ Items 4, 9.

¹⁰ Item 4; AE A-2, A-3.

¹¹ Item 4, 6; AE A-1.

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 filed Chapter 13 bankruptcy, which was later dismissed and has delinquent debts that remain unpaid or unresolved. He also failed to file and pay his federal income taxes for years 2009 through 2102. 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 the debts are unlikely to recur. AG ¶ 20(a) does not apply. Applicant provided evidence that his wife's accident contributed to his financial problems. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. He failed to present sufficient evidence of responsible behavior. I find AG ¶ 20(b) does not apply. Applicant

presented no evidence of financial counseling. Even though he finally filed his federal tax returns for years 2009 through 2013, he owes over \$55,000 in back taxes and his recent payment plan is not decreasing his balance. I conclude there is no clear evidence that Applicant's financial problems are being resolved or under control because the debts remain unpaid and his tax debt is not decreasing. I find AG ¶¶ 20(c) and 20(d) do not apply. He failed to supply documentary evidence to show that he paid any debts. He also failed to document his dispute of SOR ¶ 1.b. 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. I also considered Applicant's personal situation, his military service, and his past financial difficulties while in the Army. He 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:
Subparagraphs 1.a – 1.i:

AGAINST APPLICANT
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