



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-03960
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro se*

06/24/2015

Decision

HOGAN, Erin C., Administrative Judge:

On September 22, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. 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 Department of Defense after September 1, 2006.

On October 23, 2014, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 16, 2015. The case was assigned to another administrative judge on January 23, 2015. On February 9, 2015, a Notice of Hearing was issued, scheduling the hearing for March 27, 2015. The hearing was continued for good cause. On a March 30, 2015, a second Notice of Hearing was issued, scheduling the hearing for May 14, 2015. On May 6, 2015, the case was transferred to me. The hearing was held as scheduled. During the hearing, the Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6. Department Counsel's discovery letter, dated January 16, 2015,

was marked as Hearing Exhibit (HE) I. Applicant testified and offered four exhibits which were admitted as Applicant Exhibits (AE) A – D. The transcript (Tr.) was received on May 22, 2015. The record was held open until May 28, 2015, to allow Applicant to submit additional documents. On May 28, 2015, Applicant requested an extension. I granted his request until June 19, 2015. He timely submitted a five-page document which was admitted as AE E. Department Counsel did not object to the admission of the document. Department Counsel's respond to AE E is marked as HE II. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his response to the SOR, Applicant admits to all SOR allegations under paragraph 1. Although he admits the falsification allegation in SOR ¶ 2.a, he also notes he did not understand the question. Based on his comment, I conclude Applicant denies the allegation in SOR ¶ 2.a.

Applicant is a 52-year-old employee of a Department of Defense contractor seeking to obtain a security clearance. He has worked for his current employer since November 2013. He previously held a security clearance with another government agency. He is a high school graduate. He is married. He and his wife have four living children. Two children are in college, one is in ninth grade, and another child is in sixth grade. One daughter passed away at the age of 10 months after an extended illness on January 14, 1998. (Tr. at 19-21, 35; Gov 1)

Applicant's security clearance background investigation revealed that he has a history of financial problems. Recent credit reports revealed he has 22 delinquent debts. The debts include a \$7,684 state tax lien for tax years 2005 and 2006 (SOR ¶ 1.a: Gov 2 at 1; Gov 3 at 4; Gov 4 at 1); a \$3,625 state tax lien for tax year 2012 (SOR ¶ 1.s: Gov 4 at 2); a \$54,744 federal tax lien for tax years 2008 and 2009 (SOR ¶ 1.t: Gov 4 at 3); a \$13,744 federal tax lien for tax year 2007 (SOR ¶ 1.u: Gov 4 at 4); a \$374,750 home mortgage that was more than 120 days past due in the amount of \$34,125 as of December 20, 2013 (SOR ¶ 1.b: Gov 3 at 4); and a second mortgage account placed for collection in the amount of \$158,185 (SOR ¶ 1.c: Gov 2 at 2; Gov 3 at 4).

Additional delinquent debts include: a \$25,000 account owed to a bank that was placed for collection (SOR ¶ 1.v: Gov 1 at 42); ten medical accounts placed for collection in the amounts of \$491, \$370, \$245, \$221, \$155, \$129, \$125, \$125, \$110, and \$75 (SOR ¶¶ 1.f, 1.h, 1.k – 1.r: Gov 2 at 1; Gov 3 at 9 - 10); a \$483 account owed to a bank placed for collection (SOR ¶ 1.d: Gov 3 at 5); a \$520 account placed for collection (SOR ¶ 1.e: Gov 3 at 9); a \$372 account placed for collection (SOR ¶ 1.g: Gov 3 at 9); and two accounts placed for collection by a city government, both in the amount of \$250 (SOR ¶¶ 1.i - 1.j: Gov 3 at 9-10).

Applicant admits to having bad credit since 2009. He and his wife separated for a period. During their separation, bills were not paid by either Applicant or his wife. (Tr. 16)

From 1994 to December 2008, Applicant worked as a telecon analyst. He eventually became the deputy director, managing 25 to 30 people. In December 2008, the company was bought by another company. Applicant received severance pay and was unemployed for one month.(Tr. 22-24) He was subsequently hired by another company, earning \$135,000 annually. He worked at that company for one year. In 2009, he was hired as a contractor for another government agency. He worked for this contractor from 2009 to 2012. He held a Top Secret clearance during this time. (Tr. 22-26)

On January 12, 2012, Applicant was arrested for driving under the influence (DUI). It was near the anniversary of his daughter's death. He never sought grief counseling and would have issues each year near the anniversary of her death. The day after his arrest, Applicant reported the arrest to his security officer. He subsequently lost his top secret security clearance as well as his well-paying job. In his next job, his income was reduced from \$138,000 annually to \$40,000 annually. With commissions, he could possibly earn \$60,000 a year. (Tr. 17, 25, 35)

Applicant testified that he is rebuilding his finances. He is now beginning to catch up on his bills. He and his wife have reconciled. He has not drunk alcohol since January 14, 2012. (The Government did not allege a concern under Guideline G: Alcohol Consumption.) His wife worked as a part-time teacher, earning a \$22,000 annual salary. She was recently hired in a full-time teaching position. Her salary will increase to \$40,000 annually. In his current position, Applicant earns between \$82,000 to \$85,000 annually. (Tr. 18, 36-37)

Applicant is applying for a mortgage modification with the creditor who owns his first mortgage, the creditor alleged in SOR ¶ 1.b. He purchased the home in 1995 for \$190,000. He demolished the home on the property and moved a neighbor's house to the property, borrowing an additional \$100,000 for the demolition of the old home and for moving his neighbor's home. He became delinquent on the mortgage in about 2010. Applicant testified that he was not paying attention to his bills and was drinking a lot of alcohol at the time. Applicant received the mortgage modification package from the bank, but has not yet submitted the application. (Tr. 18, 37 - 41)

Regarding the \$158,185 debt owed on a second mortgage, which is alleged in SOR ¶ 1.c, Applicant pays a law firm \$350 a month. The payment comes from a direct allotment from his pay check. Applicant had made three monthly payments towards this debt. (Tr. 41)

Applicant entered into a repayment agreement with the state tax authority for his delinquent state income taxes. He made a \$1,100 down payment and agreed to pay \$353 a month. (Tr. 47; AE A)

The federal income tax debt occurred when Applicant and his wife were separated. His wife withdrew money from her 401(k) account and the taxes for early withdrawal were not paid. The federal tax debts alleged in SOR ¶¶ 1.t and 1.u are not resolved yet. Applicant hopes to hire a tax attorney. (Tr. 45)

The \$25,000 debt alleged in SOR ¶ 1.v was for a repossessed boat. Applicant purchased the boat in 2006 for \$60,000. He has not been able to enter into a payment plan. (Tr. 46) Applicant also testified that he has not resolved the remaining smaller debts because he is attempting to resolve the larger debts first. (Tr. 43-44)

In 2011, Applicant and his wife filed for bankruptcy under Chapter 13. The case was eventually dismissed because Applicant and his wife could not make payments. They separated and Applicant lost his job in early 2012. Applicant's 2011 Chapter 13 bankruptcy was not alleged in the SOR. It will not be considered as a disqualifying factor, but will be considered as part of matters in mitigation. (Tr. 48-49; Gov 1 at 39)

In his post-hearing submissions, Applicant provided documentation that he filed for Chapter 13 bankruptcy on June 18, 2015. He provided a Notice of Bankruptcy Case Filing from the U.S. Bankruptcy Court. His bankruptcy attorney also filed a letter confirming that he represents Applicant in his Chapter 13 bankruptcy proceeding. (AE 5)

Personal Conduct

Applicant completed his e-QIP application on December 5, 2013. In response to section 26, Financial Record, Taxes, Applicant answered, "No" to the following question: "In the past seven (7) years, have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?" He did not list his federal and state tax debts that are alleged in SOR ¶¶ 1.a, 1.s, 1.t, and 1.u. In his response to the SOR, Applicant admitted to the falsification allegation under Guideline E, SOR ¶ 2.a. He said he did not understand the question. During the hearing, Applicant said he did not know why he did not answer the question correctly. He said he did not intend to deliberately falsify his e-QIP application.

On the same e-QIP application, dated December 5, 2013, in response to section 26, Delinquency Involving Routine Accounts, Applicant listed that he owed back taxes to the IRS for tax years 2009 – 2010. He estimated the total balance of the debt was \$25,000. He indicated the tax debt was unresolved. Applicant indicated that he was having financial problems in response to other questions in section 26. He indicated that he filed for Chapter 13 bankruptcy in June 2011 and that it was dismissed in October 2011. He indicated in response to section 25, Investigation and Clearance Record, that his top secret clearance was revoked because of his DWI and financial issues. (Gov 1 at 38-43) While Applicant may not have been one hundred percent accurate about the extent of his tax debts, he listed that he owed the IRS for back taxes in response to a different question on section 26. When the answers to all the questions in section 26 on Applicant's e-QIP application are considered, it is clear that he disclosed that he had

financial problems. The Government was put on notice that Applicant had tax debts in response to a different question in section 26.

Whole-person Factors

Applicant provided a copy of his performance report covering the period from February 1, 2014 to January 30, 2015. His overall rating was described as “Frequently exceeds expectations.” His rater noted that, “His work product and diligence has been reported as very high quality, and his knowledge and experience are valued highly by the prime contract program manager, and by the Government customer, as evidenced by the execution of the next option year by the Government.” (AE B)

The President of the previous company Applicant worked for from January 2013 to January 2014 notes that Applicant was a key member of the management staff. He states that Applicant displayed a high level of professionalism during his tenure with the company. “He was always on time for work and meetings; built strong working relationships with clients, prospects and staff; was very effective in support of our client’s telecom systems; provided tremendous insight and advice to prospective customers during the sales process, and was always dependable and loyal.” He strongly recommends Applicant for any position in the telecom field. (AE C)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when determining 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, the applicant is

responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 relating to the guideline 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 disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations) apply to Applicant's case. Applicant has acquired delinquent debt since 2005. Applicant owes approximately \$11,309 for past-due state income taxes for tax years 2005, 2006, and 2012; approximately \$68,488 for past-due federal income taxes for tax years 2007, 2008 and 2009; approximately \$34,125 for a delinquent first mortgage; approximately \$158,185 for a delinquent second mortgage that was placed for collection; approximately \$25,000 as a result of repossessed motor boat; and approximately \$3,921 for 15 other minor accounts. He has been unable to satisfy these debts over the past several years.

AG ¶19(f) (financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern) also applies based on Applicant's admission that he neglected his finances during the period that he was drinking alcohol. However, he has been sober since January 2012.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with their creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage their finances in such a way as to meet their financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions apply:

AG ¶ 20(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) applies, in part, because of the reduced income Applicant received after losing his well-paying job in January 2012. However, it is noted that most of the tax debts became past due from 2005 to 2011, before he was terminated. His temporary marital separation also contributed to his financial problems. AG ¶ 20(b) is given less weight because Applicant admits that he did not pay any bills during the period he and his wife were separated. While his income was reduced in January 2012, his income has gradually improved. Yet, Applicant did not attempt to resolve his delinquent accounts until recently, even the 10 delinquent debts (SOR ¶¶ 1.i -1.r) that had balances under \$250. For this reason, I cannot conclude Applicant acted responsibly under the circumstances.

AG ¶ 20(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) partially applies because Applicant is in the beginning of the bankruptcy process. He will be required to attend financial counseling. I cannot conclude Applicant's financial situation will be under control because of his past unsuccessful attempt at filing for Chapter 13 bankruptcy in 2011. It is too soon to conclude that he will successfully

complete his recent Chapter 13 payment plan, because he just began the bankruptcy filing process.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant entered into repayment agreements with the creditors alleged in SOR ¶¶ 1.c, 1.a, and 1.s. After the hearing, he filed for Chapter 13 bankruptcy on June 18, 2015. While Applicant intends to resolve his debts, it is too soon to conclude that he will achieve financial stability given his history of financial irresponsibility and the extensive amount of the delinquent debts to include substantial federal income tax debts which are usually not dischargeable in bankruptcy.

Guideline E – Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following disqualifying condition potentially applies to Applicant's case:

AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities).

I find it does not apply because Applicant disclosed that he had financial problems in response to other questions on his e-QIP application. In addition, he disclosed that he had delinquent tax debts in response to another question in section 26 on his e-QIP application. He put the Government on notice that he had delinquent tax debts. Applicant did not deliberately omit his delinquent tax debts in response to section 26 on his e-QIP application dated December 5, 2013. Guideline E is found for Applicant.

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 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 considered the favorable recommendations of Applicant's two most recent supervisors. I considered that the death of Applicant's 10-month-old daughter greatly impacted him and his wife for years. It lead him to abuse alcohol which resulted in the DUI which cost him a well-paying job in January 2012. The loss of his job and the temporary separation from his wife resulted in greatly reduced income for Applicant and additional financial problems. Applicant should be commended for dealing with his alcohol problem and remaining sober since January 2012. However, Applicant has had financial problems since 2005, years before his job termination.

Before the hearing, Applicant entered into repayment agreements for three of his delinquent accounts. The majority of his delinquent debt remained unresolved on the day of the hearing. After the hearing, he filed for bankruptcy under Chapter 13. A Chapter 13 bankruptcy usually involves a five-year repayment schedule. While a conditional clearance would be reasonable in Applicant's situation, I do not have authority to grant a conditional clearance in industrial security clearance cases. At the moment, it is unclear whether Applicant will succeed in his most recent Chapter 13 bankruptcy. His previous 2011 Chapter 13 bankruptcy filing was dismissed for failure to make payments. It is too soon to conclude that Applicant's financial situation will be stabilized as a result of his most recent Chapter 13 bankruptcy filing. Security concerns under financial considerations are not mitigated.

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.w:	Against Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 2.a:

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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge