



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03994

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: Lawrence Berger, Esq.

05/31/2016

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On March 28, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted under Executive Order 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) effective within the DOD on September 1, 2006.

Applicant answered (Ans) the SOR on May 6, 2015, and requested a hearing before an administrative judge. On October 19, 2015, I was assigned the case. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 9, 2015, and the hearing was convened as scheduled on December 8, 2015. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence

without objection. Department Counsel's discovery letter sent to Applicant, which contained an exhibit list, was marked as Hearing Exhibit (HE) I. Applicant testified and offered exhibits (AE) A through D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 29, 2015.

Findings of Fact

Applicant admitted all the SOR allegations with explanations. These admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 63-year-old employee of a defense contractor. He has worked for this employer since 2011. He is a retired federal employee with approximately 22 years of service. He retired from federal service in 2009. Between 2009 and 2011, he was unemployed. He has a bachelor's degree. He spent two years in the Marine Corps from 1971 to 1973 and was honorably discharged. He is married for the second time and has two stepchildren. He has held a security clearance since 1987.¹

The SOR alleges four delinquent debts in the amount of approximately \$19,893. The debts were listed in credit reports from October 2013 and July 2014.²

Before Applicant retired from federal service, he was earning a yearly salary of approximately \$120,000. He characterized his retirement as mandatory without providing an explanation. He further explained that his wife experienced some medical issues about the time of his retirement that caused her to be hospitalized. None of the SOR debts are for medical expenses. After his retirement, he sought employment, but was unable to find a job until about 2011. He testified that his retirement income was between \$60,000 and \$70,000. However, he furnished documentation showing that in 2013 his gross retirement income was approximately \$86,000. After his 2009 retirement, he was having difficulty paying all of his debts, including his home mortgage payments. He purchased the home in 2000 for approximately \$242,000. He refinanced it in about 2002 for approximately \$436,000. He used some of the proceeds from the refinancing to pay other loans and debts. He sought the assistance of legal counsel to explore options, in particular, the possibility of seeking a home loan modification. Applicant stopped paying his mortgage at some point and the home went into foreclosure. At the time of the foreclosure, Applicant owed more than the value of the home. Eventually, after going through mediation and failed attempted short sales, his home sold in January 2013. There were no proceeds from the sale and he was not responsible for any deficiency.³

¹ Tr. at 18-21, 24; GE 1.

² GE 2, 4.

³ Tr. at 21-24, 28-29, 31-32, 40, 48-50, 57-58; Ans; GE 3 (See interrogatory answer, "exhibit 10").

Applicant received a job offer in 2011 that required a move to a different state. He paid for the move. The amount of hours he was working at the job he relocated for was not satisfactory. This caused continual financial problems with his remaining debts. In April 2013, he contacted a second attorney about his remaining debts, including the SOR debts. Applicant was advised that bankruptcy was not appropriate for his situation and was told to refrain from paying any of the credit card debts because they were beyond the statute of limitations. In his answer to the SOR, Applicant relied on the statute of limitations argument as a rationale for nonpayment. Applicant claims this second attorney sent correspondence to the creditor of SOR ¶ 1.d, but he did not provide the correspondence.⁴

In May 2014, Applicant's father passed away. Applicant decided to move to the state where his father lived (Applicant's current location). He was able to continue his job from this new location. Applicant inherited approximately \$45,000 from his father's estate. He did not use any of this money to pay his SOR debts, but rather used it for a down payment on a home he built in his new location. After the SOR was issued, Applicant retained counsel of record who in May 2015 sent all four SOR creditors letters to establish contact. No responses were received from the creditors and counsel resent similar letters in December 2015, shortly before this hearing. No responses were received. Department Counsel pointed out that the addresses on the letters were different from the addresses of the creditors as stated on the credit report in evidence. Applicant claimed that he always was diligent about completing change of address information. Aside from the contacts made by his two attorneys, Applicant made no effort to contact the creditors on his own. The status of the SOR-related debts is as follows:⁵

SOR ¶ 1.a (credit card debt \$8,630):

This account was opened in 2005. The date of last action on the account was May 2010. The original creditor went out of business, but a subsequent financial institution owns the debt. No proof of payment or established payment plan was offered into evidence. This debt is unresolved.⁶

SOR ¶ 1.b (consumer debt \$2,512):

This is a consumer debt for a computer purchase. The account was opened in 2007. The last action on the account was in June 2009. No proof of payment or established payment plan was offered into evidence. This debt is unresolved.⁷

⁴ Tr. at 33-34, 37; Ans; GE 3 (See Applicant's two page narrative explanation labeled "Attachment").

⁵ Tr. at 43-46, 55-56; Ans; GE 3 (See Applicant's two page narrative explanation labeled "Attachment"); AE A-D.

⁶ Tr. at 25-26; Ans; GE 2.

⁷ Tr. at 26; Ans; GE 2.

SOR ¶ 1.c (credit card debt \$1,341):

Applicant admitted this was a charge account at a retail establishment. The account was opened in 2006 and the last action on the account was in October 2010. No proof of payment or established payment plan was offered into evidence. This debt is unresolved.⁸

SOR ¶ 1.d (credit card debt \$7,410):

This account was opened in September 2010. The last action on this account was in September 2013. No proof of payment or established payment plan was offered into evidence. This debt is unresolved.⁹

According to his personal financial statement completed in June 2014, Applicant listed his net monthly income as \$7,698 and his expenses and obligations as \$4,240. This total left him with monthly discretionary income of \$3,458. Other than his discussions with three different attorneys about his financial situation, there is no evidence of formal financial counselling.¹⁰

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 that are to be 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, administrative judges apply the guidelines 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.

⁸ Tr. at 27; Ans; GE 2.

⁹ Tr. at 27; Ans; GE 2.

¹⁰ Tr. at 47-48; GE 4.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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* Executive Order 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 as follows:

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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant has four delinquent debts that remain unpaid. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations 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.

Although Applicant's debts are dated, they are still owed. Other than attempting to contact the creditors after receiving the SOR on debts that are years old, Applicant has taken no substantial action to resolve these debts. His inaction shows a lack of reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's post-retirement unemployment and his move to take a new job is a condition beyond his control. However, he has done nothing to address the debts. Applicant did not contact the creditors on his own. He waited until the SOR was issued before he had his attorney attempt to contact the four creditors. An attorney earlier told Applicant not to pay the debts because they were unenforceable due to the applicable statute of limitations. He failed to provide proof of payment or established payment plans for any of the debts. Overall, the record evidence does not support that Applicant's action were responsible under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has not sought financial counseling, but he sought legal advice from three different attorneys about his financial situation. Given the unpaid status of all the SOR debts, his failure to apply any of his discretionary income toward the debt, and his failure to apply any of his inheritance toward his outstanding debt, there are not clear indications that Applicant's financial problems are under control. His earlier reliance on the statute of limitations and his late attempt to contact the creditors do not constitute evidence of good-faith efforts to pay or resolve the remaining debts.¹¹ AG ¶ 20(c) and ¶ 20(d) do not apply.

¹¹ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the predecessor mitigating condition to AG ¶ 20(d)], an Applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the Applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows

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 relevant 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.

I considered Applicant's military service and the circumstances by which he became indebted. However, I also considered that he has made little effort to resolve his financial situation. He has not established a meaningful track record of debt management, which causes me to question his willingness to resolve his debts.

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 has not mitigated the financial considerations security concerns.

reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an Applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [AG ¶ 20(d)].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

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.d: 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