



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



In the matter of:)
)
) ISCR Case No. 15-01722
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

04/29/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On October 19, 2015, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 DOD on September 1, 2006.

Applicant answered the SOR on November 14, 2015, and requested a hearing before an administrative judge. The case was assigned to me on January 22, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 22, 2016. I convened the hearing as scheduled on March 15, 2016. The

Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Applicant testified and did not offer any exhibits. DOHA received the hearing transcript (Tr.) on March 24, 2016.

Procedural Issues

Department Counsel moved to amend SOR ¶ 1.a to change the dollar amount alleged from \$32,590 to \$20,000.¹ The motion was granted.

Findings of Fact

Applicant admitted all of the allegations in SOR except ¶¶ 1.a, 1.f, 1.h, 1.i, 1.l, and 1.m. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 41 years old. He has a high school education and some college, but no degree. He served in the military from 1993 to 2002, when he was honorably discharged. He was married from 2001 to 2004. He has no children and does not provide financial support to anyone. He worked for a government contractor from 2002 until October 2013. He testified that his employer was downsizing, and he had already planned on seeking other employment. His employer learned of his plan to leave, so instead of being terminated, he resigned. He collected unemployment benefits from December 2013 until April 2014. Since then he has worked in construction and as a handyman. Applicant testified he held a top secret security clearance and access to sensitive compartmented information while in the military and during his government contractor employment. He is presently being sponsored for a security clearance by a prospective government contractor employer.²

Applicant's salary in 2013 was approximately \$96,000, and the two prior years it was \$93,000. He attributed his financial problems and delinquent debts to unemployment, underemployment, and medical issues. He acknowledged that when he was employed he spent his money somewhat frivolously. He testified: "I was spending it because I earned it."³ He lived beyond his means the last two years he was steadily employed. After he left his job he was earning about \$18,000. He stated: "I did not save because I did not need to." He said he did not anticipate being unemployed or having medical issues.⁴

¹ Tr. 64, 67-68.

² Tr. 16-22, 50.

³ Tr. 48.

⁴ Tr. 46-49.

Applicant had medical problems in the spring of 2012, which resulted in four months of treatment. He had medical insurance and his employer provided medical leave. His treatments were completed in approximately October 2012. He estimated his out-of-pocket expenses at that time were about \$5,000 to \$6,000. He used all of his savings to pay those expenses. When he left employment he had about \$2,000 in savings. While employed, in addition to his medical bills as noted, he spent his money on credit cards, a truck loan and “basically spending my—spending the rest of it on whatever came up; computers, whatnot.”⁵

The debts alleged in the SOR are supported by credit reports from November 2012 and February 2015, along with information disclosed in Applicant’s security clearance application (SCA).⁶

SOR ¶ 1.a alleged Applicant is indebted to the Internal Revenue Service (IRS) for delinquent taxes for tax year 2007 in the approximate amount of \$20,000. Applicant explained that he was employed overseas from 2002 until April 2007, and while employed overseas a portion of his income was exempt from federal income tax. He stated he attempted to adjust his tax year to reflect the move. He testified that he was notified by the IRS in 2008 that he owed approximately \$25,000 for tax year 2007. He stated he contacted the IRS later in 2008 and advised it that he had “adjusted the tax date.” He testified the IRS advised him he would be contacted by its office later, but it never did. He filed his 2008 federal income tax return and assumed the problem was fixed. He believed the tax issue dealt only with tax year 2007. He testified that he thought the amount of the tax debt should have been between \$3,000 and \$6,000 for the nonexempt amount he earned during the months of 2007 while living overseas.⁷

Applicant disclosed on his 2012 SCA that he owed approximately \$20,000 to the IRS and that he was working with a tax service to “sort this out.”⁸ He testified that he was advised by the IRS in writing in 2012 that he owed \$20,000. He testified he advised his security office of the IRS notice. Applicant contacted a “tax relief office,” to remedy the issue, but he did not want to pay their fee. He acknowledged he had the money to pay the tax service, but he did not want to spend it. He was concerned because the tax service indicated there were no guarantees. He testified that the IRS did not call him after 2008, so he did not follow up. He testified he was going to address the tax problem, but did not. After receiving the SOR and being put on notice about the tax debt, Applicant did not contact the IRS to resolve the debt. It remains unpaid.⁹

⁵ Tr. 22-25.

⁶ Tr. 67; GE 1, 2, 3.

⁷ Tr. 38-42, 51-55.

⁸ GE 1.

⁹ Tr. 42-44, 51-64.

Applicant testified that the debts in SOR ¶¶ 1.g (\$244), 1.h (\$183), 1.j (\$758), and 1.k (\$574) are for medical services. He stated he made payments on those debts until he resigned from his job and then stopped making payments. He testified that he owed the debt in SOR ¶ 1.h at one time, but the creditor opted to use “this debt as a tax write off” and advised him he was no longer liable for the debt. Applicant did not provide documents to substantiate that he is no longer liable for the debt. It is listed as a collection account on his February 2015 credit report. None of the debts are resolved.¹⁰

Applicant purchased a new truck in 2012 for \$23,000. He stopped making payments sometime prior to June 2014. In July 2014, the truck was repossessed and auctioned off. The debt in SOR ¶ 1.b (\$6,503) is the deficiency balance owed to the collection agency. Applicant informed the creditor that he intends to pay it when he is employed.¹¹ The debt is not resolved.

The debt in SOR ¶ 1.c (\$3,545) is a loan and a line of credit Applicant obtained from his credit union. He took the loan out in 2013 to start a business. He stopped making payments in 2014. He has contacted the creditor. He intends on paying it when he is employed.¹² It is not resolved.

The debt in SOR ¶ 1.d (\$1,249) is partially owed for check-writing overdrafts. Applicant could not recall what the remaining amount was owed for. Applicant thought he was going to receive some money that would cover the checks, but did not. He stated he contacted the creditor. He intends on paying it when he is employed.¹³ It is not resolved.

Applicant admitted he owed the debt in SOR ¶ 1.e (\$547) for cable services that has been delinquent since 2014. He stated he paid half of the bill, but was unable to pay the remainder. It remains unresolved.¹⁴

Applicant disputed that he owed the electric company debt in SOR ¶ 1.f (\$399) stating that he already paid it. He said the debt was delinquent for two to three years. He did not provide documentary proof that the debt is paid.¹⁵

Applicant disputes the debts in SOR ¶¶ 1.i (\$2,487) and 1.m (\$2,243). He testified the accounts are the same debt. I concur. The debt is for unpaid rent for an apartment he rented in 2007. He stated he had a one-year lease. He gave two months’

¹⁰ Tr. 26-28.

¹¹ Tr. 28-30.

¹² Tr. 30-31.

¹³ Tr. 31-32.

¹⁴ Tr. 32-34.

¹⁵ Tr. 34.

notice to vacate the apartment. He stated the landlord lost the notice. Applicant told the landlord he would not pay. Applicant stated he sent the creditor a letter about three years ago disputing the debt. He did not have a copy. He does not believe he owes the debt and stated it is no longer reflected on his credit report.¹⁶

Applicant stated he was never notified of the electric debt in SOR ¶ 1.I (\$62). In his answer to the SOR, he stated he was not aware of the debt and did not believe he owed it. He testified he contacted the creditor and was told it did not have a record of the debt. He stated he requested the collection company contact him “monthly for an update in status and to arrange for repayment once I am employed fulltime.”¹⁷ At his hearing, he testified he is waiting for the collection company to contact him. He has not disputed it on his credit report.¹⁸ The debt is not resolved.

Applicant explained that after he obtains his security clearance and is working he will then pay his delinquent debts. He stated that he presently does not make enough money to pay these debts. He admitted he was living beyond his means in years past, but has learned his lesson.¹⁹

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

¹⁶ Tr. 35-38. This debt is reported in GE 2, but not in GE 3.

¹⁷ Answer to SOR.

¹⁸ Tr. 37-38.

¹⁹ Tr. 44-49.

on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 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 conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

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

Applicant owes more than \$16,000 in delinquent debts that are unpaid or unresolved. He also owes a tax debt from 2007 that is unpaid. He is unable or unwilling to resolve his delinquent debts. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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;
- (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 debt 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 numerous debts remain delinquent and unpaid. He admittedly earned a substantial salary at one time, but spent it frivolously, and did not save money. He had the resources to resolve his tax debt at the time it was levied, but did not pay it or pay a tax advisor to help him resolve it. The debt is unpaid. His behavior casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his delinquent debts to periods of unemployment, underemployment, and medical issues. These were conditions beyond his control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. Applicant had the resources when he was employed to save some money to cover medical bills not covered by insurance. He also had the resources to address his tax debt when he became aware there was an issue, but failed to do so. He does not provide support to others. He admitted he had no savings and spent his money frivolously. Although he indicated he intended to pay his delinquent debts, at this time he is unable to do so. Applicant failed to act responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant did not provide evidence that he participated in financial counseling. There are not clear indications his financial problems are being resolved or are under control. He has not made a good-faith effort to pay or resolve even the smallest debts. He intends to wait until he obtains a security clearance and is working, and then he will begin to resolve his debts. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant disputed the amount owed on the tax debt in SOR ¶ 1.a, but failed to provide any documents to support his position, or to substantiate action he has taken to resolve it. He disputed the electric bill in SOR ¶ 1.d, stating he paid it, but did not provide proof of payment. He stated he is no longer responsible for the medical debt in SOR ¶ 1.h because the creditor claimed it as a tax write off. That delinquent debt is on his 2015 credit report and owned by a collection agency. It is unpaid. Applicant failed to provide evidence he is no longer responsible for the debt. He disputed the debts in SOR ¶¶ 1.i and 1.m stating he provided the landlord with proper notice, and he is not responsible for the amount alleged. I concur that these two debts are for the same account and find for Applicant on the greater amount in SOR ¶ 1.i. Applicant did not provide any documentary evidence to support his position or action he took to dispute this debt or any others on his credit report. He does not believe he owes the electric bill in SOR ¶ 1.l. He will wait for the collection agency to contact him to resolve the debt once he is employed. AG ¶ 20(e) does not apply to any of the debts alleged because Applicant has not provided documentation to substantiate the basis of his disputes or evidence of actions to resolve the debts.

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 the 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.

Applicant is 41 years old. He served in the military and was honorably discharged. He has a tax debt that he failed to resolve despite being aware of it for many years and having the resources to pay it. Understandably, he may dispute the amount he owes, but he has failed to contact the IRS or hire someone to help him as he stated he was doing in his SCA. Applicant's unemployment and underemployment impacted his ability to pay his delinquent debts. However, he does not have a financial plan for resolving the debts other than obtaining a security clearance and starting a job with his prospective employer. Applicant has the burden of persuasion to mitigate the security concerns about his finances before he is granted a security clearance. He has not met that burden. Applicant's conduct raises questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, eligibility, and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the financial considerations guideline.

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.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.m:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge