



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



In the matter of:)
)
) ISCR Case No. 11-02075
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated criminal conduct and personal conduct security concerns, but he has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 16, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations), J (criminal conduct), and E (personal conduct). The action was taken 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on December 12, 2011, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on February 29, 2012. A complete copy of the

file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 21, 2012. As of May 24, 2012, he had not responded. The case was assigned to me on May 29, 2012. The Government exhibits included in the FORM are admitted.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. He is applying for a security clearance for the first time. He is a high school graduate and attended a trade school after graduation. He is married. It appears that he has children, but he did not list any children on his Questionnaire for National Security Positions (SF 86).¹

Applicant did not register with the Selective Service System, as was required by the Military Selective Service Act, 50 U.S.C. App. § 453. He stated that after he graduated high school, he went directly to a trade school and then immediately started working after graduating from the trade school. He thought he had registered, but he realized he had not when he checked with the Selective Service System.²

Applicant operated his own business, and his finances were stable through the mid-2000s. He and another individual opened a separate business in about 2004. Applicant's partner handled the administrative side of the business, which included managing the accounting and ensuring the taxes were paid. The business was unsuccessful, and without Applicant's knowledge, the partner was not paying the taxes. The Internal Revenue Service (IRS) filed a \$31,962 tax lien against Applicant in 2007. Applicant and the partner severed the business relationship in about 2008, but Applicant was left with multiple unpaid bills.³

Applicant filed Chapter 7 bankruptcy in May 2011. He received financial counseling as a requirement of his bankruptcy. The bankruptcy was converted to a Chapter 13 bankruptcy in September 2011. The bankruptcy was dismissed in November 2011 for failure to file information.⁴

The SOR alleges the IRS tax lien, eight delinquent debts, three unpaid judgments, and Applicant's bankruptcy. Applicant denied owing the \$3,150 debt alleged in SOR ¶ 1.i, which he stated was settled. That debt is listed on the most recent credit report from February 2012, with a balance of \$3,150. Applicant did not submit any documentation showing that the debt was settled. He accurately stated that the debts

¹ Items 6, 7.

² Items 5-7.

³ Items 5-8, 13.

⁴ Items 5, 8, 14.

alleged in SOR ¶¶ 1.l and 1.m were duplicates of the debts alleged in SOR ¶¶ 1.h and 1.b. He admitted the remaining financial allegations, with explanations.⁵

Applicant stated that the IRS seized about \$13,000 from his bank account as payment towards his back taxes. He also stated that “[t]he IRS is due some money, [he] had unfiled returns which have been filed and will be settling this issue [as soon as possible].” He did not submit any documentation establishing any payments toward the delinquent taxes.⁶

SOR ¶¶ 1.h, 1.j, and 1.k allege two past-due mortgages and a past-due home equity line of credit owed to the same financial institution. Applicant stated that he had recently made a \$3,200 payment towards his home mortgage. He did not submit documentation of any payments.⁷

The remaining delinquent debts and unpaid judgments total about \$155,000. Applicant did not submit any documentation establishing payments toward any of these debts.⁸

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 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.

⁵ Items 5-7, 9-12.

⁶ Items 5, 9-13.

⁷ Items 5, 9-12.

⁸ Items 5, 6, 9-12.

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 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 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* 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 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 accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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.

The debts alleged in SOR ¶¶ 1.l and 1.m are duplicates of the debts alleged in SOR ¶¶ 1.h and 1.b. The duplicate allegations in SOR ¶¶ 1.l and 1.m are concluded for Applicant.

Applicant's financial issues are related to his failed business. That was beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant has not submitted any evidence of payments toward his delinquent debts. His Chapter 13 bankruptcy was dismissed in November 2011 for failure to file information. Applicant received financial counseling as a requirement of his bankruptcy, but there is insufficient evidence for a determination that Applicant acted responsibly and made a good-faith effort to repay or otherwise resolve his delinquent debts. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. The first part of AG ¶ 20(c) is applicable; the second part is not. I find that security concerns remain despite the presence of limited mitigation.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant failed to register with the Selective Service System, as was required by the Military Selective Service Act, 50 U.S.C. App. § 453. It is a criminal offense, punishable by imprisonment of not more than five years and a fine of not more than \$10,000, to knowingly fail to register. Both disqualifying conditions have been established.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

It has been more than 20 years since Applicant failed to register with the Selective Service System. His criminal record is otherwise clean. I find there is evidence of successful rehabilitation, and Applicant's criminal behavior is unlikely to recur. AG ¶¶ 32(a) and (d) are applicable.

Guideline E, Personal Conduct

The security concern 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant displayed questionable judgment and an unwillingness to comply with rules and regulations when he failed to register with the Selective Service System. That conduct also created a vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable as disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant has been open and honest about his failure to register with the Selective Service System, which reduces his vulnerability to exploitation, manipulation, and duress. AG ¶ 17(e) is applicable. AG ¶¶ 17(c) and 17(d) are also applicable under the same rationale discussed under Guideline J.

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 Guidelines F, J, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 46 years old. It has been decades since he failed to register with the Selective Service System. That conduct is no longer a security concern. His financial problems were caused by a failed business venture. His Chapter 7 bankruptcy was converted to a Chapter 13 bankruptcy, and then dismissed for failure to file information. Applicant's current plan to address his delinquent debts is unknown. The limited information in the record has not convinced me that Applicant's finances are sufficiently in order to warrant a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated criminal conduct and personal conduct security concerns, but he has not mitigated financial considerations security concerns.

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.k:	Against Applicant
Subparagraphs 1.l-1.m:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Paragraph 3, Guideline E:

FOR APPLICANT

Subparagraph 3.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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge