



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



In the matter of:)
)
) ISCR Case No. 11-13529
)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

06/08/2012

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 January 20, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on February 16, 2012, and requested a hearing before an administrative judge. The case was assigned to me on April 3, 2012. DOHA issued a notice of hearing on April 6, 2012, and the hearing was convened as

scheduled on April 25, 2012. The Government offered exhibits (GE) 1 through 11, which were admitted into evidence without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified and submitted exhibits (AE) A through C at the hearing, which were admitted into evidence without objection. His exhibit list was marked as HE II. The record was held open for Applicant to submit additional information. Applicant submitted AE D through F, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 3, 2012.

Findings of Fact

Applicant admitted all the SOR allegations. Those 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 70-year-old president of a defense contractor company (Co. 2). He started Co. 2 in 2005. He has a master's degree in engineering. He is married, with two adult children. His wife does not work. He retired from the U.S. Air Force as a lieutenant colonel. He receives both monthly military retirement and social security payments. He has held a security clearance in the past, but he does not currently hold one.¹

The SOR alleges seven delinquent debts, two tax liens, and two judgments. The total of all his delinquent obligations is \$600,112. The debts were listed on credit reports obtained on March 28, 2009, and November 15, 2011.²

From June 1995 through October 2005, Applicant was the president and CEO of a government contractor business (Co. 1). Co. 1 contracted with other government agencies (OGAs) installing security services throughout the world. Applicant relied on these various government-funded contracts to keep his business operating. Because the contract payments by the OGAs to Co. 1 were delayed, Applicant hired a "factoring" credit agency to supply a steady cash flow on a monthly basis. In return, the factoring company would receive Co. 1's accounts receivables at some specified rate. During 2005, Co. 1 was working on an overseas contract that was significantly delayed. Co. 1 was to earn approximately \$500,000 upon completion of the contract. The factoring company became concerned that Co. 1 would not complete the contract and thus not receive the contract payments. As a result, a receiver was appointed for Co. 1 and a Chapter 11 voluntary bankruptcy petition was filed in November 2005. In January 2007, the case was converted to a Chapter 7 bankruptcy. At that time, court filings showed that Co. 1's assets were about \$596,000 and its liabilities were over \$ 7 million. Applicant had personally guaranteed many of the loans of Co. 1. Consequently, even though Co. 1 was discharged from its liabilities through the bankruptcy, Applicant was personally responsible for those loans he guaranteed. Applicant was able to pay several

¹ Tr. at 6; GE 1, 9.

² GE 7-8.

of the loan guarantee debts totaling more than \$100,000 and those debts are not listed in the SOR.³

The debt alleged in SOR ¶ 1.a is federal tax lien in the amount of over \$397,000. This debt was incurred by Co. 1 because it failed to pay payroll taxes for several quarters in 2005. Applicant did not realize at the time the taxes were not being paid. He has been working with the IRS to resolve this issue. He proposed an “offer in compromise” in October 2010. Since that time, he has paid \$500 monthly payments to the IRS for a total of about \$9,000. The IRS is still in the process of considering his offer in compromise, which is to pay \$48,000 to settle the \$397,000 tax debt. This debt is unresolved.⁴

The debts alleged at SOR ¶¶ 1.b, 1.c, and 1.f have been paid. These debts are resolved.⁵

The debts alleged at SOR ¶¶ 1.d, 1.h, and 1.j are all debts Applicant incurred as a result of his personal guarantee of Co. 1’s debts. He admitted to owing these debts. He contacted the creditor and it agreed to settle the debts if he paid 60 percent on a balance of \$40,000. He is considering the settlement offer. These debts are unresolved. The debt listed at SOR ¶ 1.i was a duplicate debt and is resolved in favor of Applicant.⁶

The debt alleged at SOR ¶ 1.e is another debt personally guaranteed by Applicant from Co. 1 in the amount of \$8,810. The creditor was willing to settle this debt for \$2,400 at one time, but Applicant did not have the funds to do so then. He recently contacted the creditor to reengage in settlement discussions. This debt is unresolved.⁷

The debts alleged at SOR ¶¶ 1.g and 1.k are judgments in the respective amounts of about \$28,797 and \$80,042. These were also debts incurred by Co. 1, which Applicant personally guaranteed. The creditor for the debt at ¶ 1.g has not been contacted and that debt is unresolved. The creditor for the debt at ¶ 1.k offered to settle the debt for \$25,000, but Applicant did not engage in settlement discussions. This debt is also unresolved.⁸

Applicant started Co. 2 in 2005 to engage in the same type of business as Co. 1 had been doing. He has built the business by obtaining contracts with OGAs. He has 14 full-time employees of the company. Co. 2 currently has about \$200,000 in the bank

³ Tr. at 24, 39-40, 45-46 22; GE 5-6, 9-10.

⁴ Tr. at 48-52; GE 9; AE A.

⁵ Tr. at 58-59, 63; See Answer.

⁶ Tr. at 59-61, 64-68; GE 7-8.

⁷ Tr. at 62-63; GE 7-8; AE D-E.

⁸ Tr. at 63-66; GE 7-8.

and was just awarded a government contract for about \$96,000. He currently draws a salary of \$72,000 from the company. From September 2005 until January 2011, he did not take a salary.⁹

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.

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

⁹ Tr. at 26, 53, 66.

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 is delinquent on taxes owed to the IRS, has two judgments against him, and owes on the remaining debts described above. Therefore, he was unable or unwilling to satisfy his obligations. 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.

Applicant's delinquent taxes, judgments, and debts are unresolved and ongoing. He has started a new business, but not addressed many of his financial problems. Similar financial problems will recur, since he is still in the same type of business that originally incurred the debts. AG ¶ 20(a) is not applicable.

Applicant made a business decision to personally guarantee the loans that Co. 1 incurred. Also, as president and CEO of Co. 1 he was responsible to ensure that the payroll taxes were properly paid. These were not financial conditions beyond his control. AG ¶ 20(b) is not applicable.

There is no evidence of financial counseling and although a few debts were paid, the larger obligations remain unpaid, with no firm settlement plan in place. AG ¶ 20(c) does not apply. AG ¶ 20(d) applies to the debts that were paid. At this point, Applicant's finances remain a concern despite the presence of some mitigation.

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 service to his country as a Vietnam veteran and a retired Air Force officer. I have considered his contractor work for the Government. However, I also considered that his previous business went bankrupt with over \$7 million worth of liabilities. He personally guaranteed some of that debt. Although he has made some

progress on reducing the guaranteed debts, a substantial amount remains including almost \$400,000 in unpaid payroll taxes. His past financial track record reflects a troublesome financial history that causes me to question his ability 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.

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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b – 1c:	For Applicant
Subparagraphs 1.d – 1e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g – 1h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j – 1k:	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