



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



In the matter of:)
)
) ISCR Case No. 12-05489
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

07/13/2017

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 December 9, 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 (EO) 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).¹

Applicant answered the SOR on January 11, 2016, and requested a hearing before an administrative judge. The case was assigned to me on January 18, 2017. The

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous version of the AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 19, 2017, and the hearing was convened as scheduled on February 23, 2017. The Government offered exhibits (GE) 1 through 11, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I. Applicant testified, called one witness, and offered exhibits (AE) A through D, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted exhibits (AE) E through G, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 2, 2017.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a - 1.b and 1.d-1.q. He denied the remaining allegations. The 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 50-year-old employee of a defense contractor. He has worked in the same position, for different contractors, for 11 years. He has a bachelor's degree. He served in the Air Force from 1986 until 1994, when he was honorably discharged as a sergeant (pay grade E-4). He divorced his wife in 1994. There were no children from this marriage. From 2008 to 2012, his girlfriend and her five children lived with him. He supported his girlfriend and her family because she did not work.²

The SOR alleges two dismissed Chapter 13 bankruptcies, one unpaid judgment, and 16 delinquent debts. The unpaid judgment and debts total \$24,330. The debts were listed in credit reports from March 2012, September 2014, and December 2016. Court records document the Chapter 13 bankruptcy cases.³

Applicant attributed his financial difficulties to health issues he experienced beginning in about 2010. In 2010, he underwent emergency surgery for an abdominal condition. His recovery period caused him to miss about a month of work, but he was on paid leave at the time. He continued to experience pain from 2011 through 2013, but continued to work and take sick leave as long as it lasted. In 2013, his pain was so significant that he stopped working altogether and was placed on short-term disability for 90 days. Once the 90 days were up, he applied for long-term disability payments, but his claim was denied. He resigned his position in December 2013 because he could not work with the pain he was experiencing. He used his 401K retirement account to support himself during this period of unemployment. He also received unemployment benefits. He was able to get treated by the VA, which eventually led to his rehiring. Although his period of unemployment is not stated in the record, his pay statement from his current employer shows that he was reemployed for the entirety of 2015. This would

² Tr. at 6-7, 29, 31-33; GE 1.

³ GE 2-10.

put his period of unemployment at approximately 12 to 13 months (December 2013 to January 2105).⁴

Applicant also explained that his then-girlfriend used money from their joint account to gamble. She took so much out that he was unable to pay his mortgage payment on occasion. He sought bankruptcy protection initially in 2010 because he got behind on his mortgage payments and he was threatened with foreclosure by the lender. After both his Chapter 13 bankruptcies were dismissed for nonpayment, his home was foreclosed in November or December 2014. Additionally, he incurred federal tax liability for withdrawing funds from his 401K account. Applicant presented a written budget and received financial counseling through the bankruptcy process.⁵

The status of the SOR-related allegations is as follows:

SOR ¶¶ 1.a and 1.b (2010 and 2012 Chapter 13 bankruptcies).

Applicant failed to make payments under his approved bankruptcy plan on two separate filings and both cases were dismissed. No debts were discharged.⁶

SOR ¶ 1.c (automobile repossession account \$12,648).

Applicant admitted purchasing a vehicle for which he could not make the payments. He voluntarily surrendered the vehicle. When he was contacted by the creditor about payments, he disputed the amount he owed after the repossession. Applicant did not produce documentary evidence to support his dispute. He also did not produce evidence of payment, establishment of a payment plan or documented correspondence with the creditor. This debt is unresolved.⁷

SOR ¶¶ 1.d through 1.p (medical collection accounts \$1,286).

Applicant provided documentary evidence showing that he has paid several of these medical accounts and he is working on paying the remaining accounts. These debts are resolved or being resolved.⁸

⁴ Tr. at 34-39, 41; AE C-D, G.

⁵ Neither Applicant's federal tax debt nor his mortgage foreclosure were alleged in the SOR. I will not use this information for disqualifying purposes, but I will use it to determine credibility, whether mitigating conditions are applicable, and in application of the whole-person factors. Tr. 45, 58-60; GE 2, 7; AE B, E.

⁶ GE 2, 7.

⁷ Tr. at 65; answer; GE 8.

⁸ Tr. at 67; answer; AE A, F.

SOR ¶ 1.q (motorcycle repossession account \$7,548).

Applicant admitted purchasing the motorcycle. He stated he could not afford the payments when he got sick and contacted the creditor to come pick it up. No one has come for the bike and he made no further efforts to pay the amount owed or set up a payment plan to resolve the account. This debt is unresolved.⁹

SOR ¶ 1.r (credit card collection account \$1,843).

Applicant denied this debt in his answer. He claimed that his ex-wife forged his signature to open this account. During his testimony, he admitted this debt and indicated that his wages were garnished to pay it. He provided proof that his wages were garnished, however, there is nothing to indicate that the garnishment was for the SOR debt. Neither the letter from his employer informing him of the garnishment action, nor his earnings statement identify the recipient of the garnished funds. Additionally, the amount garnished does not equal the amount of this SOR debt. This debt is unresolved.¹⁰

SOR ¶ 1.s (judgment \$1,005).

Applicant disputes this rent-related debt claiming that he gave proper notice before vacating the property. He did not provide written documentation to support his dispute. The judgment has not been paid. This debt is unresolved.¹¹

Character Evidence.

Applicant presented the testimony of his supervisor who is also his current landlord. The supervisor stated that Applicant was an excellent performer and recommended him for a clearance. As a tenant, Applicant has been on time with his rent and has not been a problem. He believes Applicant is back on track financially.¹²

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.

⁹ Tr. at 72-73; GE 10.

¹⁰ Tr. at 80; answer; GE 8-10.

¹¹ Tr. at 72-73; GE 10.

¹² Tr. at 90-93.

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(a), 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 national security eligibility will be resolved in favor of the 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, 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 that an 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 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

AG ¶ 18 expresses the security concern for financial considerations:

Failure 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 or sensitive information. Financial distress can also be

caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that remain unpaid or unresolved. He also failed to make payments under his Chapter 13 bankruptcies. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to 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 debts are recent and multiple, and his inaction in addressing the larger debts shows a lack of reliability, trustworthiness, and good judgment. He has addressed the smaller medical debts. AG ¶ 20(a) is not applicable.

Applicant's period of unemployment from December 2013 to January 2015, and his girlfriend's gambling are circumstances beyond his control. Other than paying some of the smaller balance medical debts, Applicant has done nothing to address the larger debts and the judgment. Overall, the record evidence does not support that Applicant's actions were responsible under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant received financial counseling. Given the unpaid status of all but one debt, Applicant's financial problems are not under control. Although he resolved or is resolving the small medical debts, the remainder of his debts remain unresolved with no established repayment plan. Evidence of good-faith efforts to pay or resolve the remaining debts is lacking. AG ¶¶ 20(c) and 20(d) partially apply. Applicant failed to document any disputes. ¶ 20(e) does not apply.

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(d):

(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 guideline 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(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's federal contractor service, his military service, the testimony of his witness, and the circumstances by which he became indebted. I also

considered that he paid several of his delinquent medical debts. However, I also considered that he has made little effort to resolve his remaining debt. He also has federal tax debt, his home was foreclosed, and he could not make his required bankruptcy plan payments. He has not established a meaningful track record of debt management, which 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
Subparagraphs: 1.a – 1.c:	Against Applicant
Subparagraphs: 1.d – 1.p:	For Applicant
Subparagraphs: 1.q – 1.s:	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