



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



In the matter of:)
)
) ISCR Case No. 12-07527
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

05/15/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On February 4, 2016, 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 (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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on May 28, 2016, and elected to have his case decided on the written record in lieu of a hearing. On July 21, 2016, Department Counsel submitted the Government's file of relevant material (FORM), including documents

identified as Items 1 through 6. Applicant received the FORM on August 11, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM or object to the Government's evidence. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 6 are admitted into evidence without objection. The case was assigned to me on May 4, 2017.

Findings of Fact

In answering the SOR, Applicant did not "admit" or "deny" each allegation. Instead, he answered each debt by indicating that it was "included in bankruptcy." He answered SOR ¶ 1.e by indicating that his bankruptcy petition was "not dismissed until October 1, 2017."¹ I construe his answers to each allegation as denials. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 41 years old. He is divorced with three teenage children, ages 16, 18 and 19. He and his wife were married from 1996 to 2006. They filed Chapter 7 bankruptcy in April 2004, and the bankruptcy was discharged in July 2004.² Since February 2012, Applicant has worked for a defense contractor. From 2008 to at least September 2012, he also worked part time for a department store.³

Applicant completed a security clearance application (SCA) in March 2012. He disclosed various delinquencies, including a foreclosure, a past-due second mortgage, and other debts being resolved through garnishment. He indicated that his debts began between 2009 and 2011.⁴

Applicant filed Chapter 13 bankruptcy in September 2012. He completed the required credit counseling. In his bankruptcy petition, he disclosed \$111,762 in liabilities and \$41,986 in assets, all personal property. He reported having \$141 in the bank. He reported yearly income between about \$20,000 and \$21,500 in 2010-2012. He reported monthly take-home income of about \$2,410, and about \$1,545 in monthly expenses, for a net remainder of \$885.⁵

He documented that as September 2014, he had been on a regular monthly bankruptcy payment plan for two years. After his first payment of \$865, he paid \$885 each

¹ This is a future date, and is therefore clearly erroneous.

² Item 6.

³ Items 2, 3.

⁴ Item 2.

⁵ Item 3.

month. He made double payments (\$1,770) twice. The payment schedule was to continue until March 2016.⁶ Applicant's bankruptcy was dismissed in October 2015. (SOR ¶ 1.e).⁷

SOR ¶ 1.a (\$27,673) is a mortgage on Applicant's foreclosed home. It is listed in Applicant's bankruptcy petition.⁸ SOR ¶ 1.b (\$4,132) is a charged-off auto loan that is listed in the bankruptcy as a secured debt for \$8,461.⁹ SOR ¶ 1.d (\$1,979) is a judgment issued against Applicant in 2011. It is listed on both the July 2016 credit report and the bankruptcy petition.¹⁰

SOR ¶ 1.c (\$105) is an unidentified medical debt, alleged based on its listing on a December 2015 credit report that is not in the record. The account is listed on the July 2016 credit report. Applicant's bankruptcy lists three small medical debts for different amounts, and it is unclear if this is one of them. Nonetheless, this debt is minor.¹¹

Applicant does not set forth what efforts he undertook to pay or otherwise resolve his debts before filing bankruptcy. He does not explain why his bankruptcy was dismissed. He does not set forth any information about subsequent efforts he might have made to pay or resolve his debts since then. He provides no updated information about his monthly income or expenses.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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),

⁶ Item 3.

⁷ Item 5.

⁸ Item 3 (under Schedule F). Applicant also disclosed the debt on his SCA, and it is listed as past due on his April 2012 credit report. Item 2 at 31-32; Item 4 at 8.

⁹ Item 3 (under Schedule D). It is also listed on Applicant's July 2016 credit report as past due for \$3,096. Item 5.

¹⁰ Item 3 (under Schedule F); Item 5.

¹¹ Item 5.

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. Likewise, I have avoided drawing 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 as to obtaining 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 as to 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

The security concern relating to the guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹²

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has a history of financial instability. He and his wife filed for bankruptcy in 2004. Applicant experienced financial problems after they divorced in 2006, leading him to file bankruptcy again in September 2012. Applicant kept up with his payment plan for about two years, but the bankruptcy was later dismissed. The record is sufficient to establish the application of the above disqualifying conditions.

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

¹² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant and his wife filed Chapter 7 bankruptcy in 2004. He had financial problems again after they divorced in 2006. He filed Chapter 13 bankruptcy in September 2012. He kept to his payment plan for about two years. His bankruptcy was dismissed in October 2015, so his debts were not discharged. His debts are therefore ongoing and there is no indication that he has since paid or resolved them. He provided insufficient evidence to conclude that his financial problems are unlikely to recur. His delinquencies continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's divorce was a circumstance beyond his control that impacted his ability to maintain financial stability. However, his divorce also occurred more than 10 years ago. His financial issues began several years later and have continued. Thus, the first prong of AG ¶ 20(b) has only limited application. Applicant has also not provided sufficient evidence that he acted responsibly in attempting to resolve his debts before he filed bankruptcy. He kept to his payment plan for about two years. But there is no evidence of what led to the dismissal of his bankruptcy petition in October 2015, and what responsible steps he took afterwards to pay or resolve his debts. The second prong of AG ¶ 20(b) does not apply.

Applicant participated in financial counseling when he filed bankruptcy. Though he was on a payment plan for about two years, his bankruptcy was later dismissed. He provides no updated information about his monthly income or expenses, or his more recent efforts to pay his debts. Without additional evidence, there are not clear indications that Applicant's financial problems are being resolved or are under control. AG ¶ 20(c) does not fully apply.

Applicant was making good-faith payments towards his bankruptcy payment plan until some point after September 2014. The bankruptcy was later dismissed, and the debts remain unresolved. Applicant has not provided evidence to establish that he is executing a reasonable ongoing plan to pay or resolve his debts. AG ¶ 20(d) does not apply.

Applicant disputed the legitimacy of the alleged debts on the grounds that they were included in the bankruptcy. This is correct, but the bankruptcy was later dismissed. The debts were not discharged when the bankruptcy was dismissed and instead remain unresolved. AG ¶ 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(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. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge