



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



In the matter of:)
)
) ISCR Case No. 12-09730
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

08/25/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 16, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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 (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on July 3, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on August 28, 2015. 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 September 10, 2015. He responded with documents that I have marked Applicant's Exhibits (AE) A through C. The case was assigned to me on April 22, 2016. The Government exhibits included in the FORM and AE A through C are admitted in evidence without objection.

Findings of Fact

Applicant is a 29-year-old employee of a defense contractor. He has worked for his current employer or a predecessor contractor since about January 2012. He was scheduled to graduate college in May 2016. As of 2012, which is the most recent information available, Applicant was unmarried without children.¹

Applicant has had financial problems for several years, which he attributed to being young and helping his parents financially. He also had extended periods of unemployment and underemployment before securing his current job.²

Applicant did not file his federal income tax return for 2011 until July 2015. There is no evidence that Applicant ever filed a state tax return for 2011. However, he was not required to file the returns because his adjusted gross income was only \$8,284.³

The SOR alleges Applicant's failure to file his state tax return for 2011 and nine delinquent debts totaling about \$13,250. Applicant admitted owing all the debts with the exception of the \$1,165 medical debt alleged in SOR ¶ 1.c and the \$450 credit-card debt alleged in SOR ¶ 1.h. All of the debts alleged in the SOR are listed on a March 2012 credit report, an August 2014 credit report, or both credit reports. The \$450 credit-card debt alleged in SOR ¶ 1.h is listed on the March 2012 combined credit report, but not the August 2014 credit report.⁴

Applicant discussed his finances when he was interviewed for his background investigation in May 2012. He admitted to the investigator that he owed the \$5,417 credit-union debt alleged in SOR ¶ 1.j. He stated that he was unaware of the remaining accounts from the March 2012 credit report. He stated that he would take steps to have the accounts that did not belong to him removed from his credit report, and he would establish payment plans for any accounts that did belong to him. He estimated the accounts would be paid in 2013 or 2014.⁵

Applicant did not pay any of the debts alleged in the SOR. In his July 2015 response to the SOR, he indicated that he contracted with a credit counseling company and entered into a debt management program. He also received financial counseling

¹ Items 3, 4.

² Items 3, 4.

³ Items 2, 4; AE B, C. See <https://www.irs.gov/pub/irs-prior/p501--2011.pdf>.

⁴ Items 2, 5, 6.

⁵ Item 4.

from the company. The company confirmed in December 2015 that Applicant was in the company's debt management program. Applicant stated that the debts would be resolved through that program. He stated that the two debts he denied would be disputed by the company and included in the debt management program if validated.⁶ Additional information about Applicant's participation in the plan was not provided.

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."

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

⁶ Item 2; AE A.

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. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (b) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant was unable or unwilling to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(b) as disqualifying conditions.

Because of his low income, Applicant was not required to file a state income tax return for 2011. AG ¶ 19(g) is not applicable. SOR ¶ 1.a is concluded for Applicant.

Conditions that could mitigate the 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;

(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 attributed his financial problems to being young and helping his parents financially. He also had extended periods of unemployment and underemployment before securing his current job. He has known that his finances were an issue since his background interview in May 2012, but he has not paid any of the debts alleged in the SOR. He contracted with a credit counseling company and entered into a debt management program. However, there was no additional evidence provided. The Appeal Board has held that “intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches.” See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

Applicant has a plan to resolve his financial problems, but he has not taken significant action to implement that plan. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. The first section of AG ¶ 20(c) (financial counseling) is applicable; the second section (clear indications that the problem is being resolved or is under control) is not applicable. AG ¶ 20(e) is applicable to the disputed debts alleged in SOR ¶¶ 1.c and 1.h. I find that financial considerations concerns remain 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in this whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.j:	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.

Edward W. Loughran
Administrative Judge