



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



In the matter of:)
)
) ISCR Case No. 12-11468
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

04/19/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On February 9, 2016, 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 March 21, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on May 2, 2016. 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 May 11, 2016. Applicant responded with documents that I have marked collectively as Applicant's Exhibit (AE) 1. The case was assigned to me on March 10, 2017. The Government's documents identified as Items 1 through 5 and AE 1 are admitted in evidence without objection.

Findings of Fact

Applicant is 51 years old. He obtained his high-school diploma in 1984. He served in the U.S. military from March 1989 until he retired in August 2010, and is considered a 90% disabled veteran. He has worked for a federal contractor since May 2010. He has held a DOD security clearance since March 1989. He married in 1986, divorced in 2000, married again in 2002, and divorced in 2006. He has one adult child from his first marriage, and two daughters, ages 17 and 14, from his second marriage. As of his August 2012 interview with an authorized DOD investigator, Applicant had been living with a cohabitant and her minor daughter since April 2006.¹

The SOR alleged Applicant's failure to file his federal income tax returns for tax years 2010 and 2011, a student loan charged off for \$77,964, and four minor delinquent consumer debts totaling \$3,844. Applicant admitted to all of the SOR allegations in his March 2016 response to the SOR. He stated that he filed his 2010 and 2011 federal income tax returns, but did not provide corroborating evidence. He further stated that a federal tax levy was entered against him in October 2015 for tax period 2011, and he had been paying \$535 monthly towards this levy since December 2015. He provided retiree account statements from December 2015 to February 2016, and May 2016, demonstrating that four payments of \$535 were deducted from his account and applied to the October 2015 tax levy, and the balance of the levy was \$1,234 as of May 2016. He planned to next tackle the balance due for his 2010 federal taxes, and expected to have it paid by October 2016.²

Credit reports from July 2012 and September 2015 verify the five debts alleged in the SOR as ¶¶ 1.b to 1.f. In 2005, Applicant co-signed on the student loan debt, alleged in SOR ¶ 1.b, for his second ex-wife. He first learned that she had not paid it in October 2010, when the student loan was already delinquent. During his August 2012 interview with an authorized DOD investigator, Applicant stated that his ex-wife was paying \$200 monthly towards this debt, but he did not provide corroborating evidence. He further stated that he did not intend to make any payments, as he was relying on his ex-wife to continue paying it. In March 2016, Applicant contracted with a debt relief service to resolve his delinquent debts, to include the student loan debt. He provided a June 2016 email from the debt relief service indicating that it sent out the first set of investigations and disputes on Applicant's behalf 45 days prior, and Applicant should soon receive updates from the three major collection agencies.³

¹ Items 1-3.

² Items 1-3; AE 1.

³ Items 1-5; AE 1.

Applicant stated that his financial problems occurred from 2010 through 2015. In 2010, one day after filing his 2010 tax returns, he was notified that his filings were rejected because his second ex-wife had already claimed their daughters on her tax returns, despite Applicant having full custody over them. A custody battle ensued, custody was reversed in his ex-wife's favor, and Applicant was ordered to pay \$1,000 monthly in child support. In August 2010, the state erroneously back-dated the child support payments to a period when Applicant's daughters lived with him, and garnished approximately \$7,000 from his wages. The state's error caused a change in the deductions on Applicant's W-4, and lowered the taxes deducted from his paycheck, which then caused him to incur a shortage at the end of the year for which he was unprepared. He did not have the money to pay his 2010 and 2011 federal taxes when they were due. From September 2010 to June 2011, the state mistakenly garnished an additional \$3,882 from his retirement check towards his child support obligation. From January to March 2014, the state also mistakenly deducted \$1,640 in medical from his pay when his daughters were already covered by TRICARE. Applicant provided seven earnings statements from January to April 2014 to show that the erroneous medical deductions that occurred from January to March 2014 were corrected in April 2014. Applicant also provided his March 2016 payment record with the state child support enforcement agency, to show that he made a total of \$69,837 in child support payments to his ex-wife between January 1999 and March 2016. Applicant noted on the payment record that he overpaid her by \$4,491.⁴

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

⁴ Items 1-5; AE 1.

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. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) 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 failed to file his federal income tax returns for tax years 2010 and 2011 as required, and he has five delinquent debts totaling \$81,808. There is sufficient evidence to support the application of the above disqualifying conditions.

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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

While Applicant stated that he filed his 2010 and 2011 federal tax returns, he did not provide corroborating documentation. Without more, I have no basis to conclude that the October 2015 federal tax levy, for which Applicant has been paying, is the balance due on either his 2010 or 2011 federal taxes. Applicant also has five unresolved delinquent debts, the largest of which is the student loan debt. Since Applicant co-signed the student loan debt with his second ex-wife, Applicant also bears responsibility, as demonstrated by the credit reports. He did not provide corroborating documentation to show that his second ex-wife has been paying this debt, or that he has otherwise resolved it through the help of the debt relief service. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to timely file his relevant tax returns and address his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Circumstances beyond his control contributed to Applicant's financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. Applicant has not demonstrated that he filed his relevant federal income tax returns, despite his indication that he had done so. Applicant contracted with a debt relief service to assist him with resolving his delinquent debts in March 2016, one month after receiving the SOR. There is insufficient evidence to conclude Applicant acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

While Applicant has apparently sought financial counseling through the debt relief service, his financial problems are not under control. AG ¶ 20(c) partially applies. Applicant has not provided evidence of any efforts he may have taken to repay or otherwise resolve his debts. AG ¶ 20(d) 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 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has held a DOD security clearance since 1989. After 21 years of service, he retired honorably from the U.S. military and is considered a 90% disabled veteran. He has worked for a federal contractor since 2010. Circumstances beyond his control contributed to his financial problems. He failed to demonstrate that he filed his federal income tax returns for 2010 and 2011 as required, and he has financial delinquencies that remain unresolved. His finances remain a security concern. He failed to meet his burden of persuasion. 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.f:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge