



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



In the matter of:)
)
) ISCR Case No. 14-05996
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

08/16/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On January 19, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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 (AG) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on June 10, 2016, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM). Applicant received it on October 7, 2016. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The case was assigned to me on July 21, 2017.

Findings of Fact

Applicant admitted all the allegations in the SOR, except ¶ 1.a, which he denied. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 47 years old. He married in 1991. He has three grown children. He retired from the military in 2008. He was employed by different federal contractors from 2008 to 2014. He was unemployed from November 2014 to September 2015, when he began working for his present employer, a federal contractor.²

In December 2012, Applicant was interviewed by a government investigator as part of his background investigation. During the interview he told the investigator that his financial problems arose because he made a late payment on his mortgage in about March 2010, which resulted in a balloon payment and penalties (SOR ¶ 1.a-past due \$58,984). At that time, he believed the past-due amount on the mortgage was about \$45,000. He also attributed his financial difficulties to car problems. He said he was working with a lawyer to help resolve his financial problems. In his answer, he denied the debt in SOR ¶ 1.a and stated the house was foreclosed in December 2012, and he had been advised by the creditor's lawyer that "everything was completed and finalized." In the summer of 2014, he received a bill regarding the mortgage. He contacted a lawyer who contacted the creditor's lawyer. His lawyer informed the other party that Applicant had been previously advised that there would be no further action on the loan after the foreclosure. Applicant stated in his answer that the original mortgage company was taken over by another company and he was forwarding information to it concerning this matter. Applicant did not provide any additional information regarding the status of this debt, however his December 2015 credit report reflects a zero balance on the charged-off loan. This debt is resolved.³

During the interview, Applicant stated there was no amount past due on his second mortgage, and he had been making extra payments and was now caught up. Applicant's second mortgage is alleged in SOR ¶ 1.b as charged off (\$42,928). In Applicant's answer to the SOR, he stated this account became delinquent when he lost his job in October 2014. Applicant's credit report from September 2014 reflects the

² Item 3.

³ Items 2, 4, 5, 6.

account was charged-off for the amount alleged in the SOR and the last activity on the account was June 2011. His December 2015 credit report reflects a lesser balance on the charged-off account (\$35,903). Applicant stated in his answer that he had a payment plan with the creditor to pay \$200 monthly. He provided no documentary evidence to corroborate the plan or payments. This debt is not resolved.⁴

Applicant acknowledged during his interview that there may be a judgment entered against him for a personal loan that he obtained to upgrade his home (SOR ¶ 1.c-\$16,136). The judgment was entered in February 2010. He had a second loan from the same creditor, but was unaware of the amount that may have been past due at that time or its current balance (SOR ¶ 1.d-\$3,224). He told the investigator that he planned to work with his lawyer to resolve these debts. In his answer, Applicant stated he told the creditor he would pay \$100 a month, and the creditor had accepted his proposal. He further stated that the debt in SOR ¶ 1.d was merged with ¶ 1.b, and the payment plan was for both debts. Applicant did not provide documented proof of the plan or any payments.⁵ These debts are unresolved.

Applicant indicated in his answer that the collection account debt in SOR ¶ 1.e (\$953) was paid. He did not provide documented evidence to substantiate payment.⁶ This debt is unresolved.

Applicant told the investigator in 2012 that he was financially stable and he was working with a lawyer to rectify his finances. He stated that he was capable of meeting his financial obligations. The debts alleged are corroborated by credit reports from September 2014 and December 2015.⁷ Applicant did not provide information about his current finances.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 ¶

⁴ Items 2, 4, 5, 6.

⁵ Items 2, 4, 5, 6.

⁶ Item 2.

⁷ Items 4, 5, 6.

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 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. 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. 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 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.

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

- (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 experienced financial difficulty beginning in about 2010. He has a judgment from 2010 and several delinquent debts that he is unable or unwilling to pay. There is sufficient evidence to support 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, 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.

The debt in SOR ¶ 1.a appears to have been resolved through foreclosure and there is no remaining balance. Applicant has a judgment and other delinquent debts that remain unresolved. There is no evidence to substantiate he has made payments or has confirmed payment plans with the creditors. The judgment was entered in 2010. During his background interview in 2012, Applicant acknowledged it and the other debts. He stated he was working with a lawyer to rectify his finances. No evidence was provided from his lawyer. Applicant's history of being unable or unwilling to resolve his debts is ongoing. There is insufficient evidence to conclude that it is unlikely similar circumstances will recur. His failure to address his debts casts doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

In 2012, Applicant attributed his financial problems to car problems and a late mortgage payment in 2010, which resulted in a balloon payment and penalties. He did not explain why he was late to pay his mortgage at that time. He then attributed his financial problems to a lengthy period of unemployment in 2014 to 2015. His unemployment was beyond his control. His failure to pay his mortgage payment in 2010, was marginally beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. A judgment was entered against Applicant in February 2010. It was brought to his attention during his 2012 interview. There is no evidence that he has made any payments on this debt in the past seven years. He was aware of other delinquent debts in 2012 and failed to provide evidence that he addressed them before he received the SOR four years later. He indicated he now has payment plans and is making payments. No evidence was presented to corroborate his assertion. I cannot find that under the circumstances he has acted responsibly. I find AG ¶ 20(b) partially applies.

Applicant stated that his lawyer was helping him rectify his finances. Applicant did not provide any documented evidence to corroborate that he has confirmed payment plans with his creditors and is making payments. There is insufficient evidence that he has initiated a good-faith effort to repay overdue creditors or otherwise resolve his debts. There is insufficient evidence to conclude Applicant's financial problems are under control. AG ¶¶ 20(c) partially applies and 20(d) does not apply.

Applicant disputed the debt in SOR ¶ 1.a. His December 2015 credit report shows a zero balance on this account. AG ¶ 20(e) applies to this debt.

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 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 47 years old and a military retiree. He has a judgment and other delinquent debts that he has been aware of since at least 2012. He did not provide sufficient evidence in mitigation. 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-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.

Carol G. Ricciardello
Administrative Judge