



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



In the matter of:)
)
) ISCR Case No. 14-06683
)
Applicant for Security Clearance)

Appearances

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

02/01/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On July 25, 2015, 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 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 November 19, 2015, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on April 25, 2016. Applicant was afforded an opportunity to file objections and

submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not object to the Government's evidence identified as Items 2 through 6, and they were admitted into evidence without objection. Applicant submitted documents that were marked as Applicant Exhibits (AE) A through G, and they were admitted into evidence without objection. The case was assigned to me on November 4, 2016.

Findings of Fact

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

Applicant is 38 years old. He earned a bachelor's degree in 2001 and a master's degree in 2007. He indicated in his answer to the FORM that he recently married and is expecting a child.

On his security clearance application, Applicant disclosed he has worked for his present employer, a government contractor, since April 2012. Before then he was employed from June 2009 to April 2012. He disclosed he was unemployed from January 2006 to June 2009. He owned a business from January 2004 to January 2007. During his background interview, Applicant explained he shut down the business from January 2006 to January 2007, and did not earn income from the business. He indicated his reason for closing his business was to pursue his education. He attended school to earn his master's degree from January 2006 to August 2008.¹

Credit reports from September 2013 and September 2014 substantiate the debts alleged in the SOR.²

SOR ¶ 1.a (\$3,798) is a charged-off account. Applicant was made aware of this debt during his November 2013 background interview. Applicant stated in his answer to the SOR that when he was in college in 1996 he applied for a credit card. He made payments on the card. He accumulated a balance of \$9,000, but was unable to pay it because he did not have enough money. He indicated he reduced the balance to \$4,000 and was paying the debt. He provided a document from April 2016 that shows he settled the account for \$1,976. He was advised by the creditor that as a result of the settlement, it may be required by the IRS to issue a Form 1099-C to Applicant to be filed with his tax returns.³

SOR ¶ 1.b (\$3,798) is a judgment filed against Applicant in February 2012. Applicant disclosed the judgment on his September 2013 security clearance application. Applicant believes this is the same debt as alleged in SOR ¶ 1.a. I am unable to make

¹ Items 3, 4.

² Items 5, 6.

³ Item 4; AE A.

that determination because the credit reports show it as a different creditor, and I am unable to verify account numbers. The document provided by Applicant to show the debt in SOR ¶ 1.a was settled, does not substantiate that that debt is a judgment or that it was released. Applicant did not provide evidence that this is a duplicative debt.⁴

SOR ¶ 1.c (\$10,997) is a federal tax lien entered in February 2011. In his November 2011 interview, Applicant acknowledged he did not pay his 2005 taxes and owed the IRS \$17,000. He told the investigator that he had the money to pay the taxes he owed by the April 2006 due date, but decided not to pay them so he could have money while he attended school to obtain his master's degree. He told the investigator that he agreed to an installment plan with the IRS to pay \$1,000 a month beginning in April 2006. He indicated he made payments from April to approximately October 2006 and then missed payments because he could not afford the amount. He did not make another payment until he arranged a lower amount with the IRS in January 2007. He told the investigator that he made \$500 monthly payments from January 2007 to either June or July 2007, and then stopped because he could no longer afford the payments. He did not make payments for four months. He then negotiated a new plan to pay \$250 a month. He stated he made these monthly payments from 2008 to February 2012. He said he was then advised by a tax firm to stop making the payments so the firm could negotiate a settlement on his behalf. Applicant told the investigator that the balance owed to the IRS was about \$12,000. He stated he had been in contact with the IRS, and it advised him that an agreement would be reached by December 2013 and the estimated settlement would be between \$2,000 and \$3,000. He planned to pay the settlement with a tax refund he expected to receive in 2013.⁵

The investigator confronted Applicant with the federal tax lien that was filed against him in February 2011 for an unpaid balance of \$10,997. Applicant indicated he was not aware that a tax lien was filed. He indicated he received a letter from the IRS advising him a tax lien would be filed against him, but he believed, because he had made payments on his tax debt after receiving the notice, that the lien would not be filed.⁶

Applicant did not provide any documentary evidence about past payments he said he made or installment agreements he had with the IRS. In his November 2015 answer to the SOR he stated: "I have communicated with the IRS and now I am on probation, as long as I pay my taxes 3 years consecutively. I have done 2 years so far and next year will be my last year and my debt will be cleared."⁷ In his May 2016 response to the FORM he stated: "My settlement with the IRS has been finalized."⁸

⁴ Items 3, 4, 5, 6; AE A.

⁵ Item 4.

⁶ Item 4.

⁷ Item 2.

⁸ AE B.

Applicant did not provide documentary evidence to substantiate his actions to resolve his federal tax lien.

In his response to the FORM, Applicant showed he had resolved some student loans. He indicated his credit rating has improved and he is in a better place financially.⁹

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), 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

⁹ AE B, C, D, E, F.

extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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.¹⁰

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 had a delinquent debt, tax lien, and a judgment. 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:

¹⁰ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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.

Applicant recently settled a debt that was charged off. He did not provide evidence to support his claim that said debt was a duplicate of the other alleged debt or that he is resolving his tax lien. Applicant told a government investigator that despite having the money, he intentionally decided not to pay his 2005 federal taxes because he used the money to pay his expenses while attending school. He advised the investigator of different installment agreements he made with the IRS, and each time he failed to complete the plan and renegotiated the agreement for lower payments. In his response to the FORM, he indicated he has a settlement agreement with the IRS, but did not provide evidence of the agreement or payments made on it. He has repeatedly reneged on payment plans with the IRS. I cannot find his behavior is unlikely to recur. His conduct is recent and casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply

Applicant attributed his credit card debt to not having sufficient money after finishing college. He did not provide specific information. He was unemployed for a lengthy period from 2006 to 2009, but it appears he voluntarily chose to attend school during part of that time. He has been employed since 2009 and worked for his current employer since 2012. He also indicated that he had the money to pay his 2005 federal taxes and chose not to so. Some period of unemployment was beyond his control. His choices to go to school and not pay his 2005 federal taxes were within his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant did not provide sufficient information about his unemployment or his finances. It has been seven years since he was unemployed. He recently settled charged-off debt despite being employed since 2009. He failed to provide documentary evidence regarding the resolution of a 2011 tax lien and a 2012 judgment. AG ¶ 20(b) has minimal applicability.

There is no evidence Applicant participated in financial counseling. He recently settled a charged-off debt, but he failed to provide substantiation that this debt is a

duplicate of a judgment entered against him. Of greater concern, is Applicant's intentional decision to not pay his 2005 federal income tax. There is insufficient evidence to conclude his finances are under control or the judgment and tax lien are resolved. AG ¶¶ 20(c) does not apply. SOR ¶ 1.a is resolved. AG ¶ 20(d) applies to that 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(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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 38 years old. He earned a bachelor's degree and a master's degree. He intentionally failed to pay his 2005 federal taxes. He has a 2011 tax lien that he has not resolved. He repeatedly reneged on agreements he made with the IRS to pay his tax debt. He failed to provide evidence it is resolved. He did not provide evidence that the judgment against him is released. Applicant was on notice in 2013 that his debts were a security concern. His unwillingness to comply with rules and regulations concerning his legal obligations to pay taxes is a security concern. He has 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	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