



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



In the matter of:)
)
) ISCR Case No. 14-07059
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

07/25/2017
Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On May 21, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. Applicant timely answered the SOR and elected to have his case decided on the written record.

Department Counsel submitted the Government's file of relevant material (FORM) on July 27, 2016. Applicant received the FORM on August 3, 2016, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and he provided a two-page response to the FORM with attached August 2016 credit report. These are collectively marked as Applicant's Exhibit (AE) A, and admitted into evidence without objection. The Government's evidence, identified as Items 1 through 7, is admitted into evidence without objection. The case was assigned to me on July 21, 2017.

Findings of Fact¹

Applicant is 36 years old. He graduated from high school in 1999 and took some college courses but did not obtain a degree. Applicant has been employed as a program manager by a federal contractor since June 2011. He served on active duty in the Army from 2000 to May 2005 when he received an honorable discharge. He has been married since November 2012. He was previously married in 2000 and divorced in 2011. He reports two children, ages 15 and 17. Applicant reports in section 25 of his Questionnaire for National Security Positions (SF - 86) or security clearance application (SCA) that he had a security clearance denied in March 2011 due to unresolved financial problems that resulted from a separation and divorce he was going through at that time.

Applicant reported delinquent debts in section 26 of his Security Clearance Application (SCA),² including taxes owed to a state because there was confusion over which spouse could claim the two children as dependents. He also disclosed several delinquent-credit-card debts that he and his ex-wife had co-signed for, and two repossessed vehicles. He also claimed that the afore-mentioned tax debt was being paid off by having \$75 per pay period deducted from his check. No documents or evidence have been offered to corroborate this assertion or any of Applicant's claims over the last six years. Applicant stated "during my divorce and preceding separation several joint accounts went into collections."³ He attributed these delinquent debts to his ex-spouse. He had taken no actions to resolve these financial issues at the time when he filled out his SCA in June 2014. Instead, he places great reliance on his contention that many delinquent debts are no longer on his credit reports.

In section 26 of an earlier March 25, 2010 SCA, Applicant first disclosed the delinquent-state-income taxes from 2009.⁴ There, he stated "Unpaid taxes – payment plan was set up to garnish wages at \$75 per pay period until debt is cleared." In his June 2014 SCA at section 26, Applicant again makes reference to the same 2009 delinquent state income taxes and the same payment plan. He still has produced no documentation to show consistent payments or the satisfaction of that tax debt.

In his Answer to the SOR, Applicant admitted the delinquent debts alleged in SOR ¶¶ 1.a through 1.f which pertained to joint-credit-card debts and an automobile repossession. In SOR ¶ 1.d, his ex-wife's vehicle was repossessed after their separation. In his Answer, Applicant repeatedly stated in response to each allegation that "the debt is the result of financial instability during lengthy separation and divorce proceedings." The divorce happened six years ago. Applicant denied the delinquent

¹ Unless stated otherwise, the source of the information in this section is Applicant's June 25, 2014 Security Clearance Application (SCA). (Item 3)

² Item 3.

³ Item 3.

⁴ Item 4.

debts reflected at SOR ¶¶ 1.g (an account placed for collection by a property manager in the amount of \$2,601) through 1.k (an account placed for collection by a cable provider in the amount of \$131). With respect to the latter, Applicant stated “we turned in the equipment...” Yet, he has provided no substantiation. With respect to the debt to the property manager, Applicant stated “it is my position that any debts for repairs made after I moved out, are the responsibility of my ex-spouse.” Since it was a joint lease they co-signed together, Applicant’s stated position is legally incorrect.

Applicant admitted the allegation in SOR ¶ 1.i (\$1,800 in taxes owed to state) and explained the error in claiming dependents while he and his ex-wife were separated pending divorce. In his Answer, Applicant also denied SOR ¶¶ 1.h and 1.i, claiming “I had my checkbook, social security number, and driver’s license stolen in San Diego.” Yet, no documents, such as a police report, were offered to support this assertion. In his November 16, 2016 response to the FORM, Applicant attached an updated August 2016 credit report from the three major credit bureaus. (AE A) Applicant reiterated his contention that he no longer was responsible for debts that fell off his credit reports, or that he successfully had removed. He claims to have disputed several invalid debts to the credit reporting agencies through online tools. On page two of his response to the FORM, Applicant stated “I continue to state that I intend to resolve these debts” and he goes on to say that “these debts are 6 – 7 years in my past.” Yet, he still hasn’t offered documentation to corroborate his assertions.

Policies

This 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 promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.⁵

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, 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(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual’s life to make an affirmative determination that the individual is an acceptable security risk. This is known as the

⁵ Although I have decided this case under the adjudicative guidelines (AG) effective June 8, 2017, I also considered the case under the former AG effective on September 1, 2006, and my decision would be the same under either AG.

“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. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and othisevidence 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, rathisthan 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 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, othissues of personnel security concern such as excessive gambling, mental health conditions, substance abuse, 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.

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.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state or local income tax as required.

Applicant's delinquent debts alleged in the SOR are confirmed by his credit reports, answer to the SOR, and his clearance interview of August 2014. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), 19(c), and 19(f) thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁶ Applicant has not met that burden. None of the delinquent debts have been adequately addressed with corroborating documentation.

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;

⁶ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . , 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 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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant endured a lengthy separation and divorce. Arguably, these conditions were beyond his control. He claims to have made payments on some debts, and successfully disputed others, but he has produced no documentation, with his Answer to the SOR, or in response to the FORM, to establish this. He has known about his financial problems and the concerns they caused to the government since as early as 2009 when he disclosed the tax debt or 2011 when he was denied a clearance. He has not demonstrated that he acted responsibly under the circumstances. Applicant has the burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur.

None of the mitigating conditions fully apply. Applicant did not provide enough details with documentary corroboration about what he did to address his SOR debts. He did not provide documentation relating to any of the SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact;⁷ (3) credible debt disputes indicating he did not believe he was responsible for the debts and why he held such a

⁷ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these debts; or (5) other evidence of progress or resolution. Applicant failed to establish mitigation under AG ¶ 20(e) because he did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

In the FORM, Department Counsel informed Applicant that it was crucial for him to provide corroborating or supporting documentation of resolution of the debts in the SOR. (FORM at 2 - 3) Aside from Applicant's uncorroborated statements, there is no documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved the SOR debts. He did not describe financial counseling or provide his budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information. The FORM informed Applicant that he had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 4)

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 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 those guidelines. Applicant served honorably in the armed forces during time of war. He has maintained employment since 2006. However, most importantly, Applicant has not met his burden of production.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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 to 1.l:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge