



Applicant for Security Clearance

Appearances

For Applicant: *Pro se*

08/02/2016

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 May 22, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. On June 17, 2016, Department Counsel amended the SOR. 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on September 18, 2015, and the amended SOR on June 21, 2016. He requested a hearing before an administrative judge. The case was assigned to me on May 2, 2016. The Defense Office of Hearings and Appeals (DOHA)

issued a notice of hearing on June 2, 2016.¹ I convened the hearing as scheduled on June 21, 2016. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through C, which were admitted into evidence without objection.² The record was held open until July 5, 2016, to permit Applicant to submit additional documents. None were received, and the record closed. DOHA received the hearing transcript (Tr.) on June 29, 2016.

Procedural Issues

At the hearing, Department Counsel moved to withdraw SOR ¶ 1.l. Her motion was granted. She additionally moved to add a new allegation, SOR ¶ 1.o, to read as follows:

“You are indebted to the Federal Government for delinquent income taxes in the approximate amount of \$30,000 owed for tax years 2007 through 2009, and that as of the date of the Statement of Reasons, the amount remains unpaid.”

There was no objection and the motion was granted.³

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c, 1.f, 1.h, 1.k, 1.m, and 1.n. He denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 54 years old. He holds an associate's degree earned in 2006. He served in the Navy from 1982 to 2004 and retired honorably in the paygrade E-7. He was married from 1986 to 2004, and has two adult children from the marriage, ages 26 and 23. He remarried in 2004 and divorced in 2010. There are no children from the marriage. Applicant has been steadily employed since at least 2008. When he retired from the Navy, his first wife was entitled to 30% of his retirement pay. After that deduction, he receives \$1,200 of retirement pay.⁴

Applicant testified that he was unemployed from November 2006 to January 2007. He was working and living paycheck to paycheck. He moved to another state to

¹ Tr. 10-13. Applicant was advised he had the right to 15 days notice regarding the additional SOR allegations. He was also advised that if he elected to proceed with the hearing, I would leave the record open to allow him time to submit documents to support his case. He waived his right and elected to proceed with the hearing.

² Hearing Exhibit I is a copy of Department Counsel's discovery letter that was provided to Applicant.

³ Tr. 60-61, 84.

⁴ Tr. 21-25.

take a job, but his wife stayed behind to finish her master's degree. He was providing her support while they lived separately. His wife filed for a separation agreement in September 2008. They divorced in June 2010. Applicant provided a copy of his divorce decree. It notes that there was a property settlement agreement from September 2008 that required Applicant to pay his wife spousal maintenance because she was unable to support herself or "meet the current debt obligations that were acquired during and for the marriage, which were obtained in her name and under her credit."⁵ The divorce decree ratified the property settlement agreement, which required Applicant to pay spousal support of \$1,700 per month for 60 months. Payments were taxable income to the spouse and tax deductible as permitted for Applicant. The decree advised Applicant if he failed to make the timely payments, then his wages could be garnished. Applicant was also required to make the monthly payments on his spouse's car loan until it was satisfied in November 2012, and the car insurance associated with the vehicle. He was required to arrange those payments by direct deposit or allotment. He testified he paid his wife the support, but was unable to make deposit payment arrangements. Applicant's wages were garnished in December 2011 to pay his spousal support. Applicant testified that his spouse lied about receiving her payments, so the garnishment was executed. The divorce decree does not address allocation of marital debts. Applicant testified that at the time he "just wanted out of it."⁶ In July 2015, Applicant's spousal support obligations were completed. He estimated his current annual income with his military retirement pay is about \$90,000.⁷

Applicant testified that from 2007 through 2009 he permitted his wife to file their federal income tax returns. They were not living together and were formally separated after September 2008. He stated he learned in 2011 that she did not file their tax returns jointly, and he owed the Internal Revenue Service (IRS) approximately \$30,000. He was contacted by the IRS in 2011 about his delinquent tax returns. He stated he tried to resolve the tax issues with the IRS, but could not, so he stopped communicating with them. In February 2016, the IRS began garnishing \$400 from his pay for the back taxes.⁸

The debts alleged in the SOR are supported by credit reports from January 2016, December 2014, and July 2012.⁹

Applicant has numerous other delinquent debts. He testified that he was working his way out of debt in 2004 after his first divorce. He had custody of the children at the time and his first wife was required to pay him child support. He attended school from 2003 to 2006 and obtained student loans. Because he failed a class, he was required to

⁵ AE A, B.

⁶ Tr. 74.

⁷ Tr. 32-36, 50-52, 74-77; AE A, B.

⁸ Tr. 54-58, 78-81.

⁹ GE 3, 4, 5.

pay the loans immediately, and his grants were cancelled. Applicant testified that payments on the student loans (SOR ¶¶ 1.a, \$9,620; and 1.k, \$7,429) were due around 2007. He said he made \$100 payments for six or seven months and then stopped because he did not have enough money. He was contacted by the creditors of his student loans in February 2016 and agreed to participate in a rehabilitation program. He agreed to pay \$97 a month for nine months and then a new monthly payment will be negotiated. Applicant provided a copy of the rehabilitation agreement he signed in February 2016. He testified that he made the payments from March through June 2016, but did not provide documentary proof.¹⁰

In August 2012, as part of Applicant's background investigation, he was interviewed by a government investigator. Applicant was specifically confronted with the delinquent debts that are alleged in the SOR ¶¶ 1.b, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, 1.l, and 1.m. He told the investigator he was unaware of any of these delinquent debts. He was also confronted with his delinquent student loans. He indicated that his student loans were deferred, and he was unaware of the balance owed. He indicated that he was working with the creditor to rehabilitate the loans. He told the investigator that he did not list the student loans on his security clearance application (SCA) because he received the past-due notice after he completed the SCA. With regard to the delinquent debts alleged in the SOR that were brought to Applicant's attention by the investigator, Applicant indicated his future plans were to research the debts, determine if they were valid, and take care of them if he owed the debt.¹¹

Applicant has not contacted the creditors for the debts in SOR ¶ 1.b (\$4,313, repossessed vehicle); ¶ 1.d (\$460, internet service); ¶ 1.e (\$216, utilities); ¶ 1.g (\$404, collection account); ¶ 1.h (\$641, credit card); ¶ 1.i (\$225, owed to town); ¶ 1.j (\$135, insurance); and ¶ 1.m (\$842, college). The debt in SOR ¶ 1.n (\$1,077) is for medical services provided in 2013. Applicant failed to submit a timely claim, and then it was too old and the insurer would not pay. The debt in SOR ¶ 1.c (\$638) is a cable bill that Applicant disputed, but never resolved. The debt in SOR ¶ 1.f is a judgment for a credit card (\$10,190) that is not resolved.¹²

Applicant told the investigator in August 2012 that he was contacted by creditors and collection agencies about his delinquent debts. He stated he was unfamiliar with the accounts they were calling about so he did not follow up. He subsequently stopped answering the telephone when they called.¹³

¹⁰ Tr. 26-32, 37-41, 66-68; AE C.

¹¹ Tr. 36, 68-72; GE 2. I have not considered this information for disqualifying purposes, but will consider it when analyzing his credibility, in mitigation, and the "whole person."

¹² Tr. 41-50, 59-66.

¹³ GE 2.

Applicant participated in financial counseling in 2006. He does not have a written budget. He stated he did not have the money to pay his delinquent debts because he was paying his second wife spousal support. That support ended in July 2015. He did not pay his delinquent debts after his spousal support ended.¹⁴

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 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 not drawn 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 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.

¹⁴ Tr. 81-82.

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 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 obtain 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.¹⁵

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent student loans, federal income taxes, an unsatisfied judgment, and numerous delinquent debts from at least 2007, which he has been unable or unwilling to satisfy. The above disqualifying conditions apply.

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

¹⁵ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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.

None of Applicant's delinquent debts are resolved. He was made aware of most of the debts alleged in the SOR during his 2012 background interview. He did not contact the creditors. He did not address his delinquent student loans until the creditor contacted him in February 2016. He was notified in 2011 that he had a federal income tax debt. Applicant stopped communicating with the IRS, and in 2016 it began garnishing his wages. His spousal support obligation terminated in July 2015. He did not take action to resolve his debts after he had additional resources. Applicant's conduct casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

For the application of AG ¶ 20(b), there must be conditions that were beyond Applicant's control that resulted in the financial hardship, and he must have acted responsibly under the circumstances. Applicant attributed his financial problems to his divorces and spousal support obligation. This was somewhat beyond his control. Applicant was confronted with and made aware of his delinquent debts during his background interview in 2012. In 2016, the student loan creditors contacted him to arrange a rehabilitation payment plan. Despite being contacted by the IRS in 2011, he failed to arrange a payment plan, and in 2016 the IRS began garnishing his wages for back taxes. Even after the spousal support ended and presumably he had more money, he ignored his delinquent debts. Applicant did not address any of the other delinquent debts. Applicant has not acted responsibly. AG ¶ 20(b) does not apply.

Applicant testified that he received financial counseling ten years ago in 2006. There are not clear indications that his financial problems are being resolved or under control. AG ¶ 20(c) minimally applies. Applicant has not made good-faith efforts to resolve his debts. Applicant did not voluntarily address his delinquent student loans or

his unpaid taxes. Rather, he was contacted by the student loan creditors who offered him the opportunity to rehabilitate his delinquent loans with monthly payments. He did not provide proof that he has made those payments. Applicant was also contacted by the IRS, but then he stopped communicating with them, and his wages were garnished. I find that he has not initiated good-faith efforts to repay his overdue creditors or otherwise resolve his debts. AG ¶ 20(d) does not apply.

Applicant testified that he disputed the cable debt in SOR ¶ 1.c, but failed to provide proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. AG ¶ 20(e) 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 my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 54 years old and a military veteran. After his divorce he had limited resources to pay his bills. However, he has also ignored his delinquent debts despite being on notice since 2012 that they were a security concern. Although the spousal support he was required to pay affected his ability to fully address all of his delinquent debts, he has not voluntarily addressed any of them since the support ended. Applicant's conduct raises serious questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the financial considerations guideline 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
Subparagraphs 1.a-1.k:	Against Applicant
Subparagraph 1.l:	Withdrawn
Subparagraphs 1.m-1.o:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge