



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



In the matter of:)
)
) ISCR Case No. 15-00313
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

08/11/2017

Decision

MURPHY, Braden M., Administrative Judge:

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

Statement of the Case

On July 5, 2015, 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 (Exec. Or.) 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.

On December 10, 2016, the Director of National Intelligence issued new National Security Adjudicative Guidelines (AG). The new AGs are effective June 8, 2017 for all

decisions after that date, and they supersede the AGs that Applicant received with the SOR.¹ Any changes resulting from the implementation of the new AGs did not affect my decision in this case.

Applicant answered the SOR on August 6, 2015, and elected to have his case decided on the written record in lieu of a hearing. On September 1, 2016, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 7. Applicant received the FORM on September 13, 2016. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM, and did not object to the Government's evidence. The SOR and the answer (Items 1 & 2) are the pleadings in the case. Items 3 through 7 are admitted into evidence without objection. The case was assigned to me on July 3, 2017.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.d, and SOR ¶¶ 1.f-1.i, and denied SOR ¶¶ 1.e and 1.j, with explanations and documents. I have incorporated his admissions and other comments into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 49 years old. He and his wife have been married since 2010. He was previously married from 1995-1998. He has a teenage daughter and two adult stepdaughters. One of Applicant's stepdaughters is disabled and on social security. His wife is her full-time caregiver, and does not work outside the home. (Item 2 at 29-33; Item 3)

Applicant earned an associate's degree from a technology institute in 2009. He worked as a custodian for a local public school system from 2002 to January 2012, when he was laid off. He was unemployed until August 2012, when he was hired for his current position with a defense contractor. (Item 3) He completed a security clearance application (SCA) in August 2012. He disclosed several delinquent student loans and consumer debts, and indicated he needed employment to pay them off. (Item 3).

In his answer to the SOR, he indicated that was unemployed for two years (2008 and 2012). This is more extensive unemployment than he noted on his SCA. (Items 2, 3).

The 10 debts alleged in the SOR total \$27,331. The debts are listed on Applicant's credit reports from December 2014 and August 2012. (Items 5, 6)²

¹ The new Adjudicative Guidelines are available on the DOHA website at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

² Item 5 lists SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, and 1.g. Item 6 lists ¶¶ 1.c, 1.d, 1.e, 1.g, 1.h, and 1.i

SOR ¶¶ 1.a and 1.b are student loans, totaling \$14,182. Applicant took out the loans with Sallie Mae between 2006 and 2008, to pay for his education. Applicant provided documents from the collection agency showing that as of June 2015 he owed \$14,628 on the two accounts. (Item 2). He indicated that he intended to pay the debts within five years. (Item 2) He provided no updated documentation in response to the FORM. These accounts remain unresolved.

SOR ¶¶ 1.c (\$1,593) and 1.d (\$1,283) are consumer debts placed for collection. Applicant indicated in his answer that he planned to pay off the accounts in two years. He provided no updated documentation in response to the FORM. These accounts remain unresolved.

SOR ¶ 1.e is a consumer debt in collection for \$975. Applicant paid the account in April 2015, after he received a court summons about it. (Item 2 at 11-15).

SOR ¶¶ 1.f (\$545) and 1.h (\$523) are consumer debts in collection to two home-shopping television channels. Applicant indicated that he would pay off the accounts off in a year. He provided no updated documentation in response to the FORM. The accounts remain unresolved.

SOR ¶ 1.g is a judgment for \$1,117. Applicant admitted the debt, but contested the amount owed. In answering the judgment, he admitted owing the creditor. Judgment was entered in the amount alleged. In 2012, he was ordered to pay \$30 a month towards the judgment. He provided proof that he made seven \$30 payments between November 2012 and October 2013 (Item 2 at 16-21) but no subsequent payments are indicated. This debt is unresolved.

SOR ¶ 1.i is a \$113 collection debt for auto insurance. Applicant admitted the debt but indicated that he had not had auto insurance with this company for 10 years. He was not aware of the debt but indicated he would research it. He provided no updated documentation in response to the FORM. The account remains unresolved.

SOR ¶ 1.j is a \$7,000 judgment to a credit card company. The judgment was issued in 2004 and is not listed on the credit reports provided by the Government. Applicant denied that he owed the amount alleged but provided documents about the debt. The creditor agreed to settle the debt for \$4,000 in April 2015. Applicant was to make monthly payments of \$166 for 24 months. He made \$200 payments in May and June 2015. He also provided court documents indicating that in May 2015 the creditor sought unsuccessfully to attach his wages to recover the debt. Applicant agreed to pay \$50 a month, and the motion to attach his wages was denied. (Item 2 at 22-29) He provided no updated documentation in response to the FORM. The account remains unresolved.

The most recent document about Applicant's finances is a November 2015 credit report provided by the Government. It post-dates the SOR. As of that date, Applicant owed \$1,150 on SOR ¶ 1.c. The judgment debt at SOR ¶ 1.g was listed as unpaid. The

student loan debt at SOR ¶ 1.a has been charged off (\$10,761 owed). Applicant had eight other student loans, all recently delinquent, totaling about \$22,219. (Item 4)

Applicant indicated he was taking debt management classes but gave no details. He provided no information about his current financial situation, such as his monthly income or expenses or his assets.

Policies

It is well established that no one has a right to a security clearance.³ As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”⁴

The adjudicative 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(a), 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.”

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

³ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”).

⁴ 484 U.S. at 531.

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. . . .

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.⁵

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

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

Applicant accrued about \$27,000 in financial delinquencies after he lost his job in the local school system in early 2012. He likely had other periods of unemployment as well. 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 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

⁵ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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; and

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

Applicant's unemployment was a circumstance beyond his control that impacted his finances. The first prong of AG ¶ 20(b) applies. For full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. He has not shown sufficient evidence that he acted responsibly.

The bulk of Applicant's delinquencies are student loans, totaling about \$14,000 (about half of the \$27,000 alleged in the SOR). Applicant provided no documents to show any payments on them. If there is an agreed-upon repayment plan in place, there is no documentation of it, and no indication that Applicant has adhered to it. One of the student loan accounts (SOR ¶ 1.a) was charged off as of November 2015 (Item 4). He settled SOR ¶ 1.j, but provided proof of only two payments, in May and June 2015. SOR ¶ 1.e has been paid.

Most importantly, while he provided documents with his answer, he provided no updated information, and no documents, in response to the FORM. Thus, he provided no more recent information about his efforts to resolve his debts than what he submitted in August 2015.

The DOHA Appeal Board has noted that:

An applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan. ISCR Case No. 07-06842 at 3 (App. Bd. May 21, 2008).⁶

Applicant provided insufficient information that he acted responsibly under the circumstances to warrant full credit under AG ¶ 20(b). Similarly, he has not established enough of a track record of steady payments or other evidence of financial stability to

⁶ ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009); *see also* ISCR Case No. 09-08462 at 3 (May 31, 2011).

show that he “initiated and is adhering to good-faith effort to repay overdue creditors or otherwise resolve debts” as required under AG ¶ 20(d).⁷

Applicant indicated that he was taking debt management classes but he gave no details. There is insufficient evidence to find that the financial counseling was from a legitimate and credible source. Even if so, there is no information about his current finances. He did not establish that his financial problems are being resolved and are under control. AG 20(c) does not fully apply.

Likewise, given the lack of recent documentation submitted, there is insufficient evidence to conclude that his financial issues are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) 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 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(a), 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. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility based on demeanor.⁸ Even though his debts occurred due to unemployment, Applicant did not provide sufficient documented information that he is resolving his debts in a good-faith, responsible manner. Overall, the record evidence leaves me with questions and doubts

⁷ ISCR Case No. 98-0445 at 3 (App. Bd. Apr. 2, 1999).

⁸ ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations 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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.j:	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 eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge