



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



In the matter of:

)
)
)
)
)
)
)
)

ISCR Case No. 15-00660

Applicant for Security Clearance

Appearances

For Government: Tovah Minster, Esq. Department Counsel
For Applicant: *Pro se*

03/21/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated September 5, 2015. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on August 11, 2016. A notice of hearing, dated November 16, 2016, was issued, scheduling the hearing for February 14, 2017. Government Exhibits (GX) 1-5 were admitted into the record. Applicant submitted Applicant Exhibits (AX A-E). I held the record open until February 28, 2017. Applicant did not submit any additional documents. He testified, but did not present

witnesses. The transcript was received on February 23, 2017. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted eight factual allegations in the SOR and denied or disputed the remaining factual allegations under Guideline F (Financial Considerations) and provided detailed explanations for each allegation.

Applicant is a 49-year-old employee of a defense contractor. In 2011, he separated from his marriage, and his divorce was final in 2016. (AX E) As a result of that marriage, he has three children. He served in the U.S. Army on active duty from 1987 until 1992. Applicant served in the National Guard for 22 years. (GX 1) He retired from the National Guard in 2010. He has worked for his current employer for five years. (Tr. 30) He has held a security clearance since the late 1980s. He completed his most recent security clearance application in 2014. (GX 1)

Financial Considerations

The SOR alleges 15 delinquent debts, including judgments, collection accounts, a federal tax lien, medical accounts and other charged-off accounts, which total approximately \$94,000. (GX 2-4) Applicant admitted to about \$4,300 in debt. The SOR also alleges that Applicant did not timely file his federal income tax returns for the years 2008 through 2012. (GX 2,3)

Applicant explained that his financial difficulties began when he was deployed and his wife was in charge of the financial affairs for the house. (Tr. 22) He admitted that he was not handling any financial issues. He believed that his issues with his wife began in the early 2000's. (Tr. 27) Applicant later learned that his wife was not paying debts that she had incurred. In addition, she had filed federal tax returns, but omitted Applicant from the returns. (Tr. 23) In other instances, she did not file the federal tax returns. He acknowledges that he did not know about this situation. He admits that he failed to pay close attention to his financial situation. (Tr. 23) He stated that he failed to take responsibility for his actions, and did not keep track of tax issues or delinquent debts. Applicant also had two short periods of unemployment in 2011 and 2014. (Tr. 34) He tried budgeting, but she did not follow the budget. He came home and would find the water turned off because his wife had not paid the bill. He would leave cash for the household bills, but his wife did not pay them. (Tr.28) They did not obtain any financial counseling.

As to SOR allegation 1.a, a 2012 judgment filed in the amount of \$10,320, Applicant disputes that he owes this money. It was the result of a dispute with a landlord. He believes the case was dismissed, but had no proof. Applicant was living in the house after his wife left, and she did not pay the rent, although he was giving her the money. It is not clear why Applicant did not just pay the landlord himself because he

stated that he did not drive. He does not intend to pay any money on this judgment. (Tr. 45)

As to SOR allegations 1.b, 1.d., 1.e, 1.f, 1.g, and 1.h, Applicant admits the debts and his failure to pay. He has no documentation of any that he might have paid. He intends to pay what he owes. (Tr. 50)

As to the SOR allegation in 1.i (collection account for \$1,038), he believes it has been paid. He did not provide any documentation to confirm his assertion. As to SOR allegation 1.j for a repossessed vehicle (\$5,680), Applicant denies the debt and claims it was not repossessed. (Tr. 52) He does not remember when he purchased the vehicle. He stated that he made no payments toward the balance after the car was removed. (Tr. 54) As to SOR allegation 1.k (\$2,574), Applicant does not think that he owes this account. He thought it was a credit card, but he believed he settled it. (Tr. 55) He did not have any documentation or evidence of the settlement. At one point, he stated that he would dispute it. (Tr. 56) Applicant denied the SOR allegation 1.l (\$821). He believes he cancelled the cable service and never received a bill. (Answer to SOR) As to SOR allegation 1.m, Applicant admits it but he has no idea what the account is. (Answer to SOR) As to the SOR allegation in 1.n (\$3,049), Applicant denies and disputes this account. He knows it was a gym membership, but he told the company to cancel his membership because he could not afford it. (Tr. 58) He states that he never received a bill.

As to the allegation in the SOR 1.o, not filing federal tax returns for tax years 2008 to 2012, Applicant restated that this issue arose because his wife was handling the filing of the tax returns. When he learned about the situation, he hired an attorney in 2015 to research the issue. Applicant claims that at this time, all returns have been filed. He worked with a lawyer and filed "married filing separate." (Tr.38) He provided a spreadsheet that did not reflect the status of the other tax-year filings. Applicant provided an account transcript from the IRS, which shows that a tax return was filed for tax year 2006 in 2009. (AX B) He did not have other documentation as proof that the tax filings were completed for the other years in question. He noted that the tax information was confusing to him, but he would check with the attorney who helped him. Applicant did not submit any post-hearing documentation to support his claim that the other years were indeed filed. Applicant noted that he had to borrow money from his family to hire the attorney. (Tr. 40)

However, in 2006, Applicant learned that he owed \$68,000 to the IRS when he sold property (his home). The sale of the property was added to his income as a capital gain. He was taxed accordingly, as required. (SOR 1.c) A tax lien was filed in 2010, in the amount of \$69,475. Applicant denies that he owes the IRS this money. In fact, he believes that they owe him \$26,000. (Answer to SOR) He went on to say that the IRS will not give him any money back due to the fact that it has been two years since the overpayment. It is unclear how he arrived at that amount. (Tr. 41) (AX C) The lien has since been released.

Applicant does not use credit cards. He pays cash for all his bills. He has checking and savings accounts. He has no retirement account. He has about \$600 in savings. He has two daughters who live with him. He provides for them financially. (Tr. 59) He thinks that his net monthly salary is \$3,400. (Tr. 62) He stated that he earns about \$65,000 annually. (Tr. 67) He noted that he does not follow a budget.

Applicant submitted a current credit bureau report and claims that he has three items on the report that reflect any delinquent debt. He has not followed up on any of the other SOR accounts and does not intend to pay the accounts that he disputed. He states that he is now a changed person and handles his finances himself.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ."¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

(a) inability or unwillingness to satisfy debts;

⁴ See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

(b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;

(c) a history of not meeting financial obligations;

(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

The Government produced sufficient evidence to show that Applicant accrued delinquent debts and failed to timely file federal income tax returns for certain years. He also has a federal tax lien and delinquent debts. The Government produced credible evidence to establish the debts and tax lien. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), 19(c) and 19(g).

AG ¶ 20 provides conditions that could mitigate the security concerns:

(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;

(d) the individual initiated 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

(f) the affluence resulted from a legal source of income.

Applicant's current financial difficulties began in the early 2000's. His wife did not handle the financial affairs of the home or file the federal income tax returns properly, or sometimes at all. Applicant did not know about this issue when he was deployed. However, he learned about the situation upon his return from deployment, but did not take immediate action. He sought an attorney in 2015 or 2016 to rectify the filing of the tax returns. He did not produce evidence that they have all been filed. He did not seem to know about his financial business even after his wife left. He will not pay certain accounts or the \$10,320 judgment. Applicant did produce evidence that the federal tax lien (\$69,475) has been released. Despite the fact that this was the largest account in the SOR, he has not shown sufficient mitigation in this case. He did not contact creditors to obtain the latest status on the other debts. He did not submit documentation after the hearing to supplement the record. He receives partial credit under AG ¶ 20(b) due to the circumstances beyond his control, but he did not act responsibly. He did not obtain counseling. He receives partial credit under AG 20(d) as the tax lien is resolved. The other mitigating conditions do not apply. Applicant did not present sufficient evidence in this case to meet his burden. He has not mitigated the financial security concerns.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is 49 years old and has served in the U.S. military. He has held a security clearance for many years. He has three children. His ex-wife did not control the financial matters for the household when Applicant was deployed. He learned about this and was not proactive. He later learned about the tax-filing issues, and in 2015 or 2016, he obtained an attorney to research the issues. Applicant did not present evidence that all the filings were filed and completed. He was vague about other accounts, and they have not been paid. He does receive credit for his satisfaction of the 2010 federal tax lien (\$69,475). Still, he does not seem to have a handle on his financial issues and has not resolved past delinquencies. He never sought financial counseling. He still does not follow a budget.

Applicant has not established that he has taken sufficient actions to reasonably and responsibly resolve his tax filings. He was provided additional time to support the record but he did not submit any documents. Applicant has not shown that he can responsibly manage his financial obligations in a more timely manner. He intends to pay some debts, but a promise to pay in the future is not sufficient. He was not proactive with the other delinquent debts. Overall, the record evidence leaves me with questions and doubts as to his judgment, trustworthiness, reliability, and eligibility for his security clearance. I conclude that Applicant has not presented sufficient evidence of mitigation of his financial considerations security concern.

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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1d-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. Clearance is denied.

NOREEN A. LYNCH
Administrative Judge