



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00782

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel

For Applicant: *Pro se*

04/13/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant failed 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 September 24, 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 (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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on October 7, 2015, and elected to have his case decided on the written record in lieu of a hearing. On May 23, 2016, Department Counsel submitted the Government's file of relevant material (FORM). The Government submitted documents identified as Items 1 through 8. The FORM was mailed to Applicant, and he

received it on May 31, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded to the FORM on June 27, 2016. His submission is marked as Applicant's Exhibit (AE) A and it is admitted into evidence without objection. Applicant did not object to the Government's evidence. Items 1-3 are the pleadings in the case. Items 4 through 8 are admitted into evidence without objection. The case was assigned to me on March 13, 2017.

Findings of Fact

Applicant admitted all the allegations in the SOR, with comments. I have incorporated his admissions and relevant 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 51 years old. In March 2010, he retired from the U.S. Navy as an E-6 after 20 years of honorable service. He held a confidential security clearance. Applicant was married from 1990-1995, and again from 2000 until April 2010. He has no children.¹

After Applicant retired, his employment was sporadic. He worked as a self-employed home handyman from March to September 2010. He worked as a manager for a storage company from September 2010 to May 2011. After learning that the company was being sold, he became concerned for his job security. He voluntarily left the position to pursue an education. He worked as a handyman again from May 2011 to June 2012. He also took some college classes from September 2011 to May 2012. In June 2012, he began working as a site supervisor for his current employer, a defense contractor.²

Applicant completed a security clearance application (SCA) in August 2012. He disclosed numerous delinquent accounts. He noted that when he retired from the military his income declined from \$5,000 to \$1,500 a month. This left him unable to pay his bills. He also noted that he and his wife divorced after he retired. He indicated he was pursuing Chapter 7 bankruptcy.³

The SOR alleges 25 delinquent accounts. It is based on credit reports from September 2012 and January 2015.⁴ One debt (SOR ¶1.a), is a mortgage foreclosure. Another debt (SOR ¶1.w) is a charged-off second mortgage, for \$62,016. Many of the debts (SOR ¶¶1.b – 1.q, 1.x and 1.y) are consumer accounts totaling about \$72,145. The remaining accounts (SOR ¶¶1.r – 1.v) are prior charge-offs alleged as remaining delinquent with no amount specified.

¹ Item 4.

² Items 4, 8.

³ Items 4, 8.

⁴ SOR debts ¶¶1.a-1.j and 1.r-1.v are found on Item 6. SOR debts ¶¶1.k-1.q and 1.w-1.y are found on Item 5.

SOR ¶¶ 1.d and 1.l are debts to the same collection agency. They appear on separate credit reports. The accounts were both opened in April 2012, and have the same high credit limit figure, of \$5,285. I find that they are duplicates and resolve SOR debt ¶1.l for Applicant.⁵

SOR ¶¶ 1.e and 1.m are debts to the same collection agency. They appear on separate credit reports. The accounts were both opened in March 2011, and have the same high credit limit figure, of \$3,127. I find that they are duplicates and resolve SOR debt ¶1.m for Applicant.

SOR ¶¶ 1.q and 1.u are debts to the same creditor bank. They appear on separate credit reports. The accounts were both opened in March 2011, and have the same high credit limit figure, of \$8,717. I find that they are duplicates and resolve SOR debt ¶1.u for Applicant.

SOR ¶¶ 1.i and 1.o appear on separate credit reports, and name two different creditors. However, they have the same account numbers. I find that they are duplicates and resolve SOR debt ¶1.o for Applicant.

The Government's evidence also includes a credit report dated May 23, 2016, the same date as the FORM. It shows that SOR debts ¶¶ 1.b, 1.c, 1.d, 1.e, 1.g, 1.h, 1.j, 1.q, 1.r, 1.s, 1.t and 1.y remain delinquent or charged off as of that date. SOR debt ¶ 1.i is shown as paid. That debt is resolved.⁶

Applicant had two mortgages on the home he and his wife maintained when he was in the Navy. He stopped paying his two mortgages after he retired from the Navy in early 2010. His efforts to renegotiate his mortgages were unsuccessful. Applicant moved out of the home and relocated to another city. The home was foreclosed in approximately May 2011. Applicant's 2012 credit report indicates that foreclosure was redeemed when the creditor reclaimed the collateral to settle the primary mortgage. The second mortgage was charged off in April 2011. Applicant's credit reports from 2015 and 2016 show that both the primary mortgage and the second mortgage now have a zero balance. The most recent credit report, from May 2016, shows that the second mortgage is a paid charge off.⁷ In his Answer, Applicant states that the foreclosed mortgage (SOR ¶1.a) and the \$10,554 consumer debt at SOR ¶ 1.b are both "closed out and on my taxes." Applicant provides no documentation to show any efforts he made to renegotiate his mortgage or bring his payments current before he moved away. He states that the debts at SOR ¶ 1.i (\$646) and SOR ¶ 1.x (\$99.00) have been paid. He provides no corroborating documentation for any of these debts.

⁵ When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice).

⁶ Item 7.

⁷ Items 5, 6, 7.

In response to the FORM, Applicant provides a statement, but no supporting documentation. He indicates that he is discussing financial counseling and bankruptcy with legal counsel. He indicates that he made his first alimony payment on time, in May 2016. He is current on his car payments and nearly finished with them. His credit score has improved. He lists 15 debts that he has paid since retiring from the Navy and beginning employment in the defense industry. These debts total about \$44,155. He does not indicate that any of them are SOR debts, though two of them, one for \$648 and one for \$99, appear to be SOR debts ¶¶1.i and 1.x.⁸ Several of the accounts Applicant lists are not found on any of the credit reports in the record, and were not alleged in the SOR. Several others are listed on his credit reports as having been paid and closed before the SOR was issued.⁹ They, too, were not alleged. Applicant provides no documentation of any payments he has made towards his SOR debts. He provides no documentation to corroborate any of his statements that his finances have improved.

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

⁸ AE A.

⁹ Items 5, 6, 7.

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.

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 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 handing 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.

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

Applicant began accumulating delinquent debt in 2010 after he retired from the Navy. Numerous accounts remain delinquent. 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:

- (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 has had significant ongoing financial delinquencies since he retired from the Navy. He did not provide any documentary evidence of his efforts to pay or otherwise resolve them. He provided no documentary evidence of his current financial situation. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His ongoing delinquent debts continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributes his financial problems to his divorce and to a significant loss of income after his retirement from the Navy in 2010. Applicant experienced sporadic employment until beginning his current position in the defense industry in 2012. His employment issues were a circumstance beyond his control that impacted his ability to maintain financial stability. However, he has been gainfully employed for almost five years, yet his financial issues remain. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. He has not provided sufficient evidence that he acted responsibly under the circumstances in handling his mortgages or other debts once he fell behind on them. AG ¶ 20(b) partially applies.

Applicant indicated that he is pursuing bankruptcy, but there is insufficient evidence that he has actually done so. He provides no evidence of financial counseling. He provides no information about his current monthly income, his monthly expenses, or

his current ability to pay his debts. Without additional evidence, there are not clear indications that Applicant's financial problems are being resolved or are under control. AG ¶ 20(c) does not apply.

I credit Applicant with resolving some of the accounts he cites in his FORM response. But many of these accounts were resolved before the SOR was issued, as detailed in the credit reports.

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.¹¹

There is insufficient evidence of Applicant's efforts to resolve his ongoing debts, which remain significant. Applicant has not provided sufficient evidence to establish that he has a reasonable plan to resolve his debts, or that he has taken steps towards establishing a reliable financial track record. Applicant has not provided sufficient evidence of his good-faith efforts to repay his creditors or otherwise resolve his debts. AG ¶ 20(d) 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(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

¹¹ ISCR Case No. 07-06482 at 3 (App. Bd., May 21, 2008).

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 a 51-year-old Navy veteran. His retirement from the Navy and divorce in 2010 led to a significant loss of income and resulting financial problems. He experienced unstable employment before finding a position in the defense industry. Though he has been gainfully employed since 2012, his financial delinquencies have continued. He provided insufficient documentary evidence of his attempts to resolve his delinquent debts, many of which remain outstanding. Applicant does not have a reliable financial track record at this time. His finances remain a security concern. He has failed to meet his burden of persuasion. The record evidence leaves me with serious 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
Subparagraphs 1.a-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.k:	Against Applicant
Subparagraphs 1.l-1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	Against Applicant
Subparagraphs 1.q-1.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraphs 1.v-1.w:	Against Applicant
Subparagraph 1.x:	For Applicant
Subparagraph 1.y:	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.

Braden M. Murphy
Administrative Judge