



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



In the matter of:)
)
) ISCR Case No. 15-00869
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

12/02/2016

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 September 5, 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 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 5, 2015, and elected to have his case decided on the written record. On December 23, 2015, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on January 20, 2016. Applicant was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation within 30 days from receipt of the FORM. Applicant did not object to the Government evidence. He provided material within the required timeframe. The Government's documents identified as Items 2 through 8 are admitted into evidence. Applicant's documents are marked as Applicant Exhibits (AE) A through G and admitted into evidence without objection. The case was assigned to me on October 6, 2016.

Findings of Fact

Applicant admitted all of the allegations in SOR, except ¶ 1.II, which he disputed the date alleged. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 64 years old. From 1972 to 2008, he has married and divorced five times. He has two adult children. He has been cohabitating with an individual since the end of his last marriage in 2008. He earned a bachelor's degree in 1974 and attended post-graduate school.¹ He has worked in the defense industry throughout his career and has held a top secret clearance since approximately 1974. He has been employed since 2012 with his current employer, a defense contractor. Before then he worked for a defense contractor from January 2001 to November 2010, when he was laid off after the project he was working on was canceled due to budget cuts. He received a severance package.² Applicant stated in his answer to the SOR:

I wish to continue contributing to this nation's defense. If I cannot regain my Top Secret Clearance then I would at least like to obtain a Secret Clearance. If I cannot work for the United States then I will be forced to assist our allies (Israel, South Korea, Japan, UAE, etc.) who would be anxious to have a world expert on these systems.³

Applicant's admissions, credit reports from December 2012, January 2014, and August 2015, and court documents substantiate the debts alleged in the SOR. Applicant has 37 delinquent accounts totaling approximately \$1,029,681. He petitioned for and received a Chapter 7 bankruptcy discharge in 1999. Although Applicant disputed the date of the bankruptcy in his answer to the SOR, he confirmed the 1999 date in his response to the FORM. He attributed his bankruptcy to his wife's overuse of credit cards. His delinquent accounts consist of seven Federal and state tax liens totaling

¹ Items 3, 4; AE G. Applicant's provided a copy of his resume. In it he indicated he earned a master's degree in Mathematical Physics in 1976 with a 3.7 grade point average. His security clearance application indicated that he was a candidate for the degree. When questioned by the government investigator in 2013, Applicant explained that he had completed the requirements for a degree, but due to time constraints, he could not complete the required thesis and additional examination. It is unknown if he subsequently completed the requirements.

² Item 2, 4.

³ Item 2.

approximately \$330,655, two judgments totaling approximately \$225,801, several consumer accounts, and more than 20 mortgage accounts.⁴

During his February 2013 personal subject interview with a government investigator, Applicant provided the following information. He started his own property management company and incorporated it in 2005 or 2006 in State A. He was the sole employee. He did not incorporate it in any other state. He purchased his first property around the same time. He continued to purchase property and owned about 20 properties, which included 15 residential properties and 5 commercial properties. They were rented and their value was increasing. He personally managed the properties until he was transferred to State B in approximately April 2007. His wife, who remained in State A, managed his properties. The properties began to experience vacancies in late 2007 and 2008. He attempted to sell the properties, but was unable to do so due to the real estate market decline. He incurred additional financial problems as he was going through a divorce in 2008. Applicant's employer transferred him to Japan in December 2008, and he lived there until March 2010. He attributed his financial problems to the collapse of the real estate market and his wife's mismanagement of the properties. He indicated that he used some of his pension funds to pay the expenses on some of the properties. It was difficult for him to manage the properties while in Japan. The lenders started to foreclose on the various properties, including his residence in State A. He again attempted to make payments in 2010 and 2011 from a pension fund. All of his properties except two were foreclosed.⁵

Applicant indicated to the investigator that he was self-employed beginning in November 2010 after he was laid off. He estimated he was earning about \$4,260 from rental income property. He also received about \$3,200 in pension benefits. The properties were located in State A. He was living in State B. He told the investigator that he collected unemployment benefits from State B from November 2010 until April 2012. During this period he was traveling from State A to State B to manage his properties. Applicant stated that in March 2011 he had medical issues, and in March 2012 he had surgery.⁶

Applicant filed his Federal income tax returns, but was not able to pay the taxes he owed for tax years 2009, 2010, 2011, and 2012. During his interview, he indicated that he had contacted the IRS to arrange a payment plan. In his response to the FORM, he stated "the Internal Revenue Service stat[ed] that the tax case is closed and in not-collectible status."⁷ The document he provided from the IRS states "we have temporarily closed your collection case for the tax types and periods listed below. We have determined that you do not have the ability to pay the money you owe at this time.

⁴ Items 2, 3, 5, 6, 7, 8; AE A.

⁵ Item 4.

⁶ Item 4.

⁷ AE A.

Although, we have temporarily closed your case, you still owe the money to the IRS. We may re-open your case in the future if your financial situation improves.”⁸ Applicant indicated in his response that once he is employed with a “fairly high salary” he will resolve his debts and submit an offer in compromise offer to the IRS and for the state taxes owed. He also indicated he may resolve his debts through bankruptcy.⁹

In 2014, Applicant began making automatic withdrawals for monthly payments to State B for delinquent state taxes. He has consistently made \$50 monthly payments since June 2014. As of April 2016, the balance owed was \$77,474 (SOR ¶ 1.c - a tax lien for \$4,057; ¶ 1.f - a tax lien for \$13,934; ¶ 1.h - a tax lien for \$3,108; ¶ 1.i - a tax lien for \$35,479 - all filed in 2013). Applicant did not provide any information or evidence of actions he has taken for the 2013 tax liens filed by State A (SOR ¶ 1.d - \$11,333 and ¶ 1.e - \$23,754).¹⁰

While living in Japan, Applicant was providing monetary support to a woman living there, but was from another country and was having financial difficulties. He would withdraw money from an automatic teller machine in Japan from his U.S. account and give her cash. He estimated he gave her \$2,000 a month. Although he could not remember the specific period he gave her this money, he estimated that while he was in Japan, he gave her a total of approximately \$20,000. He told the investigator that initially he was not aware that he was having financial difficulties with his rental properties. He told the investigator that he had left his ex-wife in charge of the property management company, and she did not keep him up-to-date with the details. He further said that even when he became aware of his financial problems, he continued to provide the woman money because she was a friend in need of assistance, and he is a very giving, caring person who enjoys helping people. Since returning to the United States, Applicant has sent her money on four different occasions. He could not recall when or the amount he sent. He indicated the last time he sent her money was 2011, despite her calling him asking him for money after then.¹¹

Applicant provided documents to show he received financial counseling and made a budget in January 2013, which was required in order for him to participate in a loan rehabilitation program for his primary residence. The budget only includes expenses and does include his income, pension, or rental income. The budget does not include payments for any of the delinquent debts. He did not provide a more recent and accurate budget.¹²

⁸ AE A, C.

⁹ AE A.

¹⁰ AE B.

¹¹ Item 4.

¹² AE D.

Applicant was unable to provide specific information to the investigator regarding each mortgage foreclosure and line-of-credit debts. He did not provide specific evidence on these debts in his answer to the SOR or the FORM. In his response to the FORM, he stated that the past-due mortgage on the condominium where he is currently living was current. He also provided court documents to show he has entered into a settlement agreement for delinquent fees owed to his condominium's homeowner's association. This debt is not alleged. He provided proof that he has been making the required payments. Applicant did not provide sufficient information to determine which debt alleged in the SOR applies to his current residence as there are numerous accounts from the same creditor.¹³

Applicant has other consumer and credit card debts that are unpaid (SOR ¶ 1.k - \$8,903; ¶ 1.n - \$1,593; ¶ 1.o - \$897; ¶ 1.p - \$4,501; ¶ 1.g - \$360).

Applicant provided a copy of his resume and career highlights.¹⁴ He also provided a letter of recommendation from 2010 from a colleague sent to his employer for a performance award. He is described as a loyal and dedicated self-starter who worked diligently for long hours to ensure success. He exercised initiative and was diligent in providing resolutions for issues. He performed superbly.¹⁵

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

¹³ Item 2; AE A, E.

¹⁴ Item 2, AE G.

¹⁵ AE G.

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 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 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 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 handling and safeguarding classified information.¹⁶

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.

Applicant has numerous debts, mortgages, and Federal and state tax liens totaling more than a million dollars that he is unable or unwilling to pay or resolve. He had debts discharged in Chapter 7 bankruptcy in 1999. 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 delinquent Federal and state tax liens, judgments, and other delinquent debts that are unpaid and unresolved. He attributes his financial problems to a downturn in the real estate market in 2007 and his ex-wife mismanaging his property management business. Applicant invested heavily in the real estate market, was aware that his investments were failing, and left his ex-wife to manage his company while he worked in another country. During this time, he gave approximately \$20,000 to a woman who was having financial difficulties. Applicant conduct casts doubt on his reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply.

¹⁶ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

The collapse of the real estate market was beyond Applicant's control. Having his ex-wife manage his property when he was already aware that the market was declining was within his control. Applicant gifted approximately \$20,000 to a woman while he was experiencing financial difficulties. These actions were within his control. Applicant also attributed his financial difficulties to his 2008 divorce, but did not provide specific information. This was beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant indicated that he attempted to use some of his pension to pay the mortgages on his 23 properties, but it was insufficient. He attempted to sell properties, but was unable to do so. He modified the mortgage where he currently resides and his payments are current. He has a modest payment plan for a state tax lien he owes with a balance over \$77,000. He has not addressed tax liens filed by another state. He is unable to pay a large Federal tax lien. He has not paid any of the smaller delinquent consumer debts. Applicant had an extensive real estate property management company. He willingly took the risk and enjoyed the profits until the market collapsed. He has not provided any information about actions he has taken to contact any of the other creditors to resolve his debts. He does not have the money to pay his creditors. AG 20(b) partially applies.

Applicant was required to take financial counseling to obtain a loan modification. It appears he did so and completed a budget. The 2013 budget is incomplete. He has not provided information about his current income and finances. The first part of AG ¶ 20(c) applies. However, there are not clear indications that Applicant's financial problems are being resolved. He is making minimal payments on a state tax liens, has not contacted State B about the delinquent tax lien he owes and currently owes more than \$239,000 for a Federal tax lien that continues to accrue interest and penalties, but is currently in an uncollectable status. AG ¶ 20(d) applies to the state tax lien in SOR ¶¶ 1.c, 1.f, 1.h and 1.i. He failed to provide detailed information as to which debt in the SOR pertains to his current residence. Applicant has not made good-faith efforts to repay the remaining creditors. AG ¶ 20(d) does not apply to the remaining debts.

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 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 64 years old. He has worked in the defense industry for many years. I have considered his accomplishments and contributions to the industry. He started a property management company in 2005 or 2006 where he was the sole employee and purchased 23 properties. The market declined, he was unable to pay the mortgages on most of the properties, and they were foreclosed. He owes Federal and state taxes. He has other consumer debts. Applicant is heavily in debt and is unable to pay his creditors. He indicated that he intends to pay his delinquent debts after he is employed with a fairly high salary. He failed to provide a viable plan to resolve his financial problems. The Appeal Board has held that “intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches.”¹⁷ He has failed to meet his burden of persuasion. The record evidence leaves me with 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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h-1.i:	For Applicant
Subparagraphs 1.j-1.ll:	Against Applicant

¹⁷ See ISCR Case No. 11-14570 at 3 (App. Bd. Oct 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

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.

Carol G. Ricciardello
Administrative Judge