



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



In the matter of:)
)
) ISCR Case No. 15-01278
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

10/03/2017

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 October 16, 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.

Applicant submitted an incomplete answer to the SOR on December 23, 2015.¹ He completed his answer on May 31, 2016, when he elected to have his case decided on the written record in lieu of a hearing. On August 9, 2016, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 8.² Applicant received the FORM on August 25, 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 8 are admitted into evidence without objection. The case was assigned to me on October 1, 2017.

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.³ Any changes resulting from the implementation of the new AGs did not affect my decision in this case.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 1.c, 1.f, 1.g, 1.i, 1.n, 1.o, and 1.q. He indicated that SOR ¶¶ 1.d, 1.e, and 1.h had been paid. He did not answer SOR ¶¶ 1.b, 1.j-1.m, and 1.p. I consider that Applicant denied any allegation that he did not specifically "admit." 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 82 years old. He honorably served in the United States Marine Corps in the 1950s, after graduating from high school. He and his wife ran a family business from 1969 to 2008, when he retired. Between May 2010 and November 2011, he worked part-time as a security guard. In May 2012, he took another job, as a reserve security guard, for a defense contractor. (Item 3)

In August 2012, in connection with this position, Applicant submitted a security clearance application (SCA). He also had a background investigation, which included a credit report, in September 2012, and a personal subject interview in October 2012. (Items 3, 4, 8) The Government's evidence also includes more recent credit reports, from January 2015, April 2015, and April 2016. (Items 5, 6, 7)

¹ In his initial answer, Applicant submitted documents and answered some, but not all, of the SOR allegations. He also did not initially indicate whether or not he wanted a hearing. (Item 1)

² The last two documents are both labeled "Item 7" by mistake, so I have renumbered the last document as Item 8.

³ The new AGs are available on the DOHA website at <http://ogc.osd.mil/doha/DIRECTIVE%202017.pdf>.

These credit reports detail the 16 delinquent debts alleged in the SOR, most of which Applicant admitted. They total about \$21,641. These include: several debts reported for collection (SOR ¶¶ 1.a, for \$5,117; 1.c, for \$282; and 1.d, for \$193); two cable bills (SOR ¶¶ 1.b, for \$414; and 1.i, for \$102); two medical accounts (SOR ¶¶ 1.e and 1.h, both for \$115); two \$52 debts to the same phone company (SOR ¶¶ 1.f and 1.g); and four judgments, all filed in 2012 (SOR ¶¶ 1.n, for \$8,002; 1.o, for \$1,860; 1.p, \$1,372; and 1.q, for \$4,010) The SOR also alleged four other previously charged-off consumer debts (SOR ¶¶ 1.j, 1.k, 1.l, and 1.m), but no dollar amount is alleged.⁴

The Government conceded in the FORM that SOR ¶¶ 1.b, 1.g and 1.p have been resolved. SOR ¶ 1.d is also shown to have been paid by a document Applicant provided with his answer.

Applicant provided a letter, which referenced three debts, all with the same collection agency and law firm. He provided two documents (one of which relates to SOR ¶ 1.d, above). The other document reflects that he arranged to settle SOR ¶ 1.a for \$4,364, and made a \$100 payment towards the debt in December 2015. (Answer)

Applicant did not offer an explanation for his debts with his answer. The only source of information on this point is his interview summary (Item 4), in which he discussed his debts at length. He indicated that some of the debts were related to his business. He also indicated that he spent seven years caring for his wife before she passed away in 2006. Applicant himself was also ill in November 2010 and October 2011 (just before he stopped working at his previous part-time position). He indicated that due to these circumstances, he got behind on his bills. He indicated that his son was living with him and helping to pay some of the bills. The interview summary did not address his financial situation, such as his monthly income or expenses or his assets. Applicant did not provide any more recent information or documents since he did not answer the Government's FORM.

Policies

It is well established that no one has a right to a security clearance.⁵ 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."⁶

⁴ Item 5 lists SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.g, 1.i, 1.m, 1.n, and 1.q. Item 6 lists SOR ¶¶ 1.a through 1.d, 1.f through 1.i, 1.n, and 1.q. Item 7 lists SOR ¶¶ 1.a through 1.g, 1.j through 1.l, and 1.n, through 1.q. Item 8 (the September 2012 credit report, labeled Item 7 by mistake) lists SOR ¶¶ 1.b, 1.c, 1.h, 1.j through 1.l, and 1.n through 1.q.

⁵ *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").

⁶ 484 U.S. at 531.

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.

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.⁷

AG ¶ 19 provides conditions that could rise security concerns. Disqualifying conditions AG ¶¶ 19(a): “inability to satisfy debts”; and 19(c): “a history of not meeting financial obligations” are applicable, given the record evidence of Applicant’s delinquent debts.

The Government did not prove that SOR ¶¶ 1.j, 1.k, 1.l, and 1.m are ongoing delinquencies. They are listed as charged-off debts on Applicant’s credit reports, but no amount is alleged as currently past-due. I resolve these debts for Applicant.

The financial considerations 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 victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to 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.

Some of the debts Applicant denied are shown by his credit reports to have been paid or resolved. This includes SOR ¶¶ 1.b, 1.d, 1.g and 1.p. AG ¶ 20(e) applies to mitigate these debts.

Applicant’s own illness and the fact that he cared for his wife for several years before she passed away in 2006 are circumstances beyond his control that doubtless impacted his finances. The first prong of AG ¶ 20(b) has some application. Applicant indicated that he paid the small medical debts at SOR ¶¶ 1.e and 1.h. I accept those answers and resolve those accounts in his favor. For his remaining debts, however, he

⁷ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

did not provide enough information to establish that they occurred due to a circumstance beyond his control.

While Applicant provided a few 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 December 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).⁸

Applicant provided insufficient information that he acted responsibly under the circumstances to warrant full credit under AG ¶ 20(b). Similarly, while some of Applicant's debts are paid or otherwise resolved, he did not provide enough information about how he planned to address his debts to warrant application of AG ¶ 20(d). He did not establish enough of a track record of steady payments or other evidence of financial stability to show that he "initiated and is adhering to good-faith effort to repay overdue creditors or otherwise resolve debts" as required. AG ¶ 20(d) does not apply.

Likewise, given the lack of recent documentation submitted, Applicant provided insufficient evidence from which 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

⁸ ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009); *see also* ISCR Case No. 09-08462 at 3 (May 31, 2011).

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. 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 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g-1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j-1.m:	For Applicant
Subparagraphs 1.n-1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	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