



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-01309
)	
)	
Applicant for Security Clearance)	

Appearances

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

12/07/2016

Decision

HOGAN, Erin C., Administrative Judge:

On November 22, 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 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

On December 2, 2015, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 25, 2016. The case was assigned to me on June 8, 2016. On August 2, 2016, a Notice of Hearing was issued, scheduling the hearing for August 24, 2016. The hearing was held as scheduled. During the hearing, the Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6. Applicant testified and offered five exhibits which were admitted as Applicant Exhibits (AE) A – F. The transcript (Tr.) was received on September 1, 2016. The record was held open until September 7, 2016, to allow Applicant to submit additional documents. Applicant timely submitted a three-page document, AE G, which was admitted without objection. Based upon a review of the

pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his response to the SOR, Applicant denies all SOR allegations.

Applicant is a 51-year-old employee of a Department of Defense contractor seeking to maintain a security clearance. He has worked for his current employer since April 2014. This is his first time applying for a security clearance. He has a high school diploma. He is twice divorced and lives with his girlfriend. He has two children born during his first marriage, a nineteen-year-old daughter and a fourteen-year-old son. (Tr. 18-19, 21, 25-26; Gov 1)

Applicant's background investigation revealed that he has a history of financial problems. His delinquent debts include: past-due child support in the amount of \$5,262 (SOR ¶ 1.a: Gov 1 at 36-37; Gov 2 at 7; Gov 3 at 3; Gov 4 at 2; Gov 5 at 4; Gov 6 at 6); a \$2,317 credit card account that was charged off in October 2010 (SOR ¶ 1.b: Gov 3 at 3; Gov 5 at 5; Gov 6 at 6); a \$2,253 credit card account placed for collection in March 2010 (SOR ¶ 1.c: Gov 2 at 9; Gov 3 at 3; Gov 4 at 3; Gov 5 at 5; Gov 6 at 6); a \$907 delinquent credit card account placed for collection in April 2010 (SOR ¶ 1.d: Gov 3 at 2; Gov 4 at 2; Gov 5 at 8); and a \$457 medical account that was placed for collection in 2012 (SOR ¶ 1.e: Gov 3 at 2; Gov 4 at 2; Gov 5 at 9).

Applicant has had several periods of unemployment over the past few years. His most recent period of unemployment was from October 2013 to February 2014, after he was laid off. He was also unemployed from February 2013 to July 2013, after being terminated for unsatisfactory performance. In May 2012, he was laid off from a company after working there for 14 years. (Tr. 22-25; Gov 1; Gov 6)

In 2011 or 2012, Applicant suffered five major strokes while at work. It was discovered a tumor was causing the problem. The tumor was removed. Applicant was unable to work for four months after the stroke. In December 2015, Applicant had additional surgery after a tumor was discovered. He was unable to work for 30 days. He still struggles with short-term memory. (Tr. 32, 44, 67-68)

Applicant has struggled financially since his first marriage dissolved in 2007. His financial situation was further aggravated by periods of unemployment and his medical condition. Applicant got behind in his child support payments and other bills. Applicant remarried in 2008. Applicant and his second wife purchased a home. After purchasing the home, they began to have financial issues. They tried to change their finances in order to save the house around 2009. In 2010, they attended financial counseling and entered a program for a year. Applicant claims the credit counselors were not helpful. The house was eventually sold at a short sale. (Tr. 34, 49-50)

Despite his financial problems, Applicant traveled to Aruba for five days in April 2009, the Bahamas for five days in June 2010; Bermuda for five days in June 2011, and Canada for five days in April 2012. He testified that his wife paid for everything. (Tr. 46-48; Gov 1; Gov 6)

Applicant now pays his child support. His child support arrearages are also taken out each month. Applicant arranged for his child support to be deducted from his paycheck when he started working for his current employer in April 2014. Applicant testified the current balance is \$4,600. (Tr. 27- 29, 35-36; AE D)

The current status of the remaining SOR accounts are:

SOR ¶ 1.a: \$5,262 past-due child support: Approximately \$119 is deducted from Applicant's pay check each month. Applicant's income tax refunds are also applied to his past due child support. As of August 26, 2016, the balance was \$5,309.67. (AE D; AE E; AE G at 2)

SOR ¶ 1.b: \$2,317 charged-off credit card account: Applicant claims this credit card has been delinquent since 2009. As of July 2016, the balance was \$2,419. Applicant eventually plans to make arrangements to pay this debt after he pays off other debts. (Tr. 37, 41; AE C)

SOR ¶ 1.c: \$2,253 credit card account placed for collection: A judgment was entered against Applicant in 2011. His wages were garnished in 2012. The payments are being garnished at his current employer as well. The balance is currently \$874.19. (Tr. 42-43; AE F)

SOR ¶ 1.d: \$907 account placed for collection: Applicant does not recognize this debt. He claims he has not been notified by the collection agency. (Tr. 45-42; AE P)

SOR ¶ 1.e: \$457 medical bill placed for collection: Applicant believed insurance would cover this bill. He does not deny the debt. (Tr. 46)

SOR ¶ 1.f: \$381 judgment: The Government presented no evidence in support of this judgment. SOR ¶ 1.f is found for Applicant. (Tr. 7)

Applicant provided a weekly budget. His gross pay is \$694. Deductions are taken for his child support \$119.90 and two loans taken against his 401(k) of \$13.46 and \$7.97 respectively. After standard deductions and medical insurance, his weekly net home pay is \$331. After rent, cable, electricity, car loan payment, car insurance, and phone are paid, he has \$94 left over each week, approximately \$376 monthly for groceries, medical co-pays, gas, clothing, and miscellaneous expenses. (AE G)

Applicant describes his current financial situation as "just getting by." Applicant's sixteen-year-old car recently broke down. He had to purchase a used 2009 car for

transportation. His car payment is \$170 a month. Applicant is attempting to catch up on things. (Tr. 49-55)

In May 2012, Applicant was depressed about marital and family problems. He was discovered in a local park with a knife threatening to kill himself. He was taken to hospital and stayed inpatient for a week. He attended counseling for several years after this incident. He does not attend counseling anymore. He now relies on his girlfriend for support. He previously made a suicide attempt 30 years earlier when he was in high school. Applicant did not list his hospitalization or his counseling in response to question 21 of his security clearance application. He did not list it, because he was embarrassed. He provided information during his personal subject interview after the investigator asked him about the incident. (Tr. 38-39, 62-64, 70-71; Gov 1, section 21; Gov 6 at 4)

Applicant's deliberate omission of this incident as well his mental health counseling on his February 2014 security clearance application is not alleged in the SOR. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the DOHA Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I considered the non-SOR derogatory information accordingly. Consideration of this information will be limited to the five circumstances outlined by the appeal board.

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 must be considered when determining 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant 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 the applicant may deliberately or inadvertently fail to protect or 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.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts); and AG ¶19(c) (a history of not meeting financial obligations) apply. Applicant has had a history of financial problems, including child support and several delinquent credit card accounts. The SOR alleges five delinquent debts, a balance of over \$11,196.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

AG ¶ 20(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) partially applies. Several conditions beyond Applicant's control contributed to his financial problems. His two divorces, his serious health issues, and several periods of unemployment made it difficult to pay the bills including child support. Now that he has suitable employment, he is beginning to resolve his delinquent child support. His wages are also being garnished for the debt alleged in SOR ¶ 1.c. I cannot conclude that he acted responsibly under the circumstances because between 2009 and 2012, Applicant and his second wife took a cruise or vacation each year. Applicant was dealing with financial problems during this period, including Applicant and his second wife's attempts to prevent their home from foreclosure. Although Applicant claims that his second wife paid for everything, it shows poor judgment. I cannot conclude Applicant acted responsibly under the circumstances.

AG ¶ 20(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) does not apply. While Applicant and his second wife attended financial counseling in

2010, he claims it did not help him. Several unresolved delinquent accounts remain. Applicant's financial status remains uncertain.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debts alleged in SOR ¶¶ 1.a and 1.c. Applicant is making payments towards these debts. However, he began to pay the debt alleged in SOR ¶ 1.c after a judgment was entered against him and his wages were garnished. The debts alleged in SOR ¶¶ 1.b, 1.d, and 1.e remain unresolved.

AG ¶ 20(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) potentially applied with respect to the debts alleged in SOR ¶¶ 1.d and 1.e, because Applicant claims he does not recognize the debt alleged in SOR ¶ 1.d, and that the medical debt alleged in SOR ¶ 1.e should have been paid by insurance. Applicant took no action to dispute these debts. AG ¶ 20(e) 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 considered that Applicant's health issues and several periods of unemployment contributed to his financial problems. However, questions about Applicant's judgment remain because of his decision to take several vacations even though he was having financial problems between 2009 and 2012 and unable to pay child support. He is now making payments on two of the debts. The remaining three debts are unresolved. His financial situation remains questionable. Security concerns under financial considerations are not mitigated.

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.c:	For Applicant
Subparagraphs 1.b, 1.d, 1.e:	Against Applicant
Subparagraph 1.f:	For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge