



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No.15-01454

Appearances

For Government: Julie Mendez, Esq. Department Counsel
For Applicant: *Pro se*

09/19/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

On August 27, 2015, The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising 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 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017.¹

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on February 15, 2017. The hearing was originally scheduled for August 4, 2017, but Applicant did not appear. During an August 4, 2017 phone call with

¹In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. Revised Adjudicative Guidelines became effective June 8, 2017. My decision and formal findings under the revised Guideline F would not be different under the 2006 Guidelines.

Department Counsel, Applicant stated that he “forgot about the hearing.” I rescheduled Applicant’s hearing, sending an amended notice, for August 18, 2017. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified but submitted no documents. I kept the record open until September 5, 2017. Applicant did not submit any documents. On that date, he asked for an extension of time, and I kept the record open until September 11, 2017. Applicant did not submit any documentation and the record was closed. The transcript was received on August 28, 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 denied the allegation at SOR ¶¶ 1.b and 1.c. He admitted SOR ¶¶ 1.d-1.e. He neither admitted or denied ¶ 1.a, but believed the account was closed. He also provided explanations with his responses.

Applicant is a 45-year-old security guard for a defense contractor. He divorced in 2012 and has three children. He obtained a GED in 1991. He served in the Army Reserve from April 1992 until April 2001. He has been with his current employer for five years. He completed his security clearance application (SCA) in July 2013. He has not previously held a security clearance. (GX 1)

Financial Considerations

The SOR alleges that Applicant has four delinquent debts, which total approximately \$113,383. The delinquent debts include three collection accounts, and a past-due primary mortgage account. The SOR also alleges that Applicant failed to timely file his 2011 and 2012 Federal income tax returns.²

Applicant’s answer provided some reasons for the delinquent accounts. He noted that in the process of divorce, he “signed over the rights” to his home to his ex-wife and that the house was sold in a short sale. He believes the short sale was at some point in 2016. He paid other bills to provide for his children, but he admitted that he fell behind on things he needed to do. He pays child support. The Federal tax returns were in the process of being prepared so that he could file.

As to SOR ¶ 1.a, a collection account in the amount of \$634, Applicant stated that the account was paid. He had no documentation to confirm his assertion.

As to SOR ¶ 1.b, Applicant denied this past-due mortgage account in the amount of \$112,527 because the house was sold and he no longer owned the property. He noted his wife took over the house, but she did not pay the mortgage. There was no legal settlement agreement providing that his ex-wife would take legal ownership of the

²At the end of the hearing, DC made a motion to amend the SOR to conform to the evidence. Applicant did not timely file his Federal income tax return from 2013-2016 (1.f) In addition, Applicant failed to timely file his state income tax returns for 2011-2016 (1.g) The SOR was amended. Motion granted.

home. It was sold in a short sale. He provided no documentation to prove this claim. He does not recall receiving any tax paperwork related to the sale of the house. (Tr. 21) He stated that this account should not be on his credit report, because there was no deficiency balance. (Tr. 16)

As to SOR ¶ 1.c, a collection account for \$117, he denied owing the account as he never had service with the company. He disputed the account, but he provided no evidence of the dispute.

As to SOR ¶ 1.d, a collection account in the amount of \$105, he believes this was a parking ticket and he intends to pay the account. (Tr. 17) He also thought he paid some parking tickets, but he knows he still has some outstanding ones.

As to SOR ¶ 1.e, the failure to file timely his Federal tax returns for 2011 and 2012, Applicant stated that he fell and was hurt and could not work. He has a plan to be debt free in six months to a year. He still has not filed the Federal returns, but he plans to do so. He also has not filed the 2013-2016 Federal income tax returns. (Tr. 22)

Applicant's salary was \$69,000 a year. He was injured in December 2016 and returned to work August 10th 2017. He is in court attempting to get worker's compensation. He did not provide details. He did not receive unemployment benefits. He used some savings to pay daily expenses and he moved and lives with his father. (Tr. 24) Since he returned to work, he is an hourly wage earner. He believes he earns \$22 an hour. He has not obtained any financial counseling. (Tr. 26)

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 national security eligibility 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. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

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 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 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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ 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 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

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

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

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

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

⁸ *Id.*

protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially over-extended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay

The Government produced credible evidence to establish the delinquent debts and the non-filing of Federal and state income tax returns. Consequently, the evidence sufficient to raise disqualifying conditions. ¶¶ 19(a), 19(c), 19(b) 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service; and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant separated, divorced, and encountered delinquent debt. He also fell and could not work, which was an event beyond his control. He has encountered many challenges to provide for his children. However, he has ongoing financial problems and has not presented any evidence that he is resolving his delinquent debts. With lack of any documentation of his efforts, it is not possible to find that he has acted responsibly in this case. He has not had financial counseling, nor did he present documentation that he has a clear plan to resolve his debts or income tax returns. He admitted that he has not filed his Federal or state income tax returns from 2011 through 2016. MC AG ¶¶ 20 (a), (b), (c), (d and (g) do not apply. He has not met his burden to alleviate the security concerns under the financial considerations guideline.

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(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 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 45 years old. He served in the Army Reserve. He is divorced and has three children. His divorce and injury impacted his ability to pay his debts. He now lives with his father as his income has been reduced. He pays child support. He was given time to provide documentation to show what he has paid and how he is resolving his income tax returns. He has not provided any evidence that he has rectified his financial situation in any way. He did not submit documentation despite the extended period of time I kept the record open. He did not articulate what plan he has to file his Federal and state income tax returns for the years in question. He intends to pay his debts, but a promise to pay is not sufficient to carry his burden.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the record evidence in the context of the whole person, I conclude that he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

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
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Subparagraphs 1.a-1.g:	Against Applicant
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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