



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



In the matter of:

ISCR Case No. 15-01734

Applicant for Security Clearance

Appearances

For Government: Carroll Connelley, Esq., Department Counsel

For Applicant: *Pro se*

11/03/2016

Decision

CERVI, Gregg A., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on September 11, 2012. On November 23, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.²

¹ Also known as a Security Clearance Application (SCA).

² 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 (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on December 15, 2015, and requested a hearing before an administrative judge. The case was assigned to me on April 13, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 23, 2016, scheduling the hearing for June 23, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on July 5, 2016.

At the conclusion of the hearing, the record was held open for Applicant to submit additional information. On June 28, 2016, he sent an e-mail to Department Counsel (AE C), noting a Chapter 13 data center website, login and password for Department Counsel to access, presumably to obtain updated information on his ongoing Chapter 13 case. He also noted that he was working with a law firm and "hiring a financial advisor to help explain the spending statement." Department Counsel replied to Applicant on July 11, 2016, informing him that he was unable to access the website and that he should electronically scan or mail documents he intends to submit post-hearing. Applicant did not respond to this e-mail. I also attempted to access his Chapter 13 account per his instructions, but was unsuccessful. I notified Applicant by e-mail on October 15, 2016, of the missed deadline for post-hearing submissions, and offered him a final opportunity to submit documents. I did not receive a reply from Applicant or any documents to date.

Findings of Fact

The SOR alleges Applicant is indebted on state and federal taxes resulting in liens, a mortgage in foreclosure, and consumer debts. Also, the SOR alleges Applicant is currently in Chapter 13 bankruptcy after a previous filing was dismissed for failure to make plan payments. Finally, the SOR alleges Applicant failed to file state and federal tax returns for tax years 2008 and 2009. He admitted SOR ¶¶ 1.b-1.d, 1.h-1.j, and 1.l. He denied SOR ¶¶ 1.a, 1.e-1.g, and 1.k. He provided explanations with his answers. The Government's evidence supports the SOR allegations.

Applicant is 51 years old and is employed in physical security for two defense contractors. He was awarded an associate's degree in management in 2015. He honorably served in the United States Army from 1983 to 2004, retiring with the rank of Sergeant First Class (E-7). He is currently single, but was previously married and divorced twice; 1986 to 1989, and 1996 to 2007. He described his divorces as "messy." His multiple deployments, for periods longer than a year, negatively impacted his last marriage and ultimately his finances, including becoming responsible for his entire mortgage payment. He has four children, ages 30, 19, 17, and 15, but none reside with him. He holds a DOD security clearance.

Applicant was unable to pay his mortgage and other debts after his divorce in 2007, resulting in the foreclosure of his home. He also incurred significant tax obligations because of his increased work hours, that he failed to pay, resulting in state

and federal tax liens. He filed Chapter 13 bankruptcy in 2007, claiming approximately \$477,000 in liabilities. In 2009, he decided to stop his monthly payments under the plan because he believed his manhood was tarnished by filing bankruptcy, and instead attempted to pay off the debts outside the bankruptcy system. As a result, the bankruptcy was dismissed for failure to make plan payments.

He again filed Chapter 13 bankruptcy in 2011, and included his unpaid taxes, mortgage deficiency and other debts. Under Schedule D of the bankruptcy petition, there are no creditors listed holding secured claims. Under Schedule E, Creditors Holding Unsecured Priority Claims, the petition listed \$18,518 owed to the Internal Revenue Service, and \$7,000 owed to a state tax authority. The petition listed debts totaling \$118,943 under Schedule F, Creditors Holding Unsecured Nonpriority Claims. His total liabilities were listed as \$144,462.

Applicant testified that he has been paying \$1,000 per month since 2011 toward his bankruptcy plan,³ and the bankruptcy was scheduled to be discharged by August 31, 2016. No documentation has been provided showing the approved bankruptcy plan, regularity of plan payments or evidence of progress, or final discharge. During a Personal Subject Interview (PSI) by an Office of Personnel Management investigator, Applicant stated that due to a dispute with his ex-spouse over how to list the children, he filed his 2008 and 2009 federal and state tax returns late; including them with his 2010 returns. No evidence has been presented showing the returns were filed, or that his tax obligations have been fully satisfied. Applicant intended to include all debts in his Chapter 13 bankruptcy, and was not aware why the debt in SOR ¶ 1.k was not included, but would check with his attorney. The debt no longer appears on his credit report.⁴ He testified that it may be a duplicate of another collection account. The remaining SOR debts were included in his bankruptcy filing.

Applicant has approximately \$8,000 in available cash, but did not provide a post-hearing personal financial statement as discussed at the hearing. His overall net income, expenses, debt payments and monthly net remainder are unclear. He presumably completed financial counseling required before filing bankruptcy, and stated that he is paying \$100 per month for financial assistance from a counselor.⁵ He did not provide evidence of such counseling.

He testified about his extensive volunteer service to his church, and the support he provides to his parents.

³ In Applicant's Personal Subject Interview (PSI), he stated he has been paying \$800 per month toward his Chapter 13 bankruptcy. GE 2.

⁴ AE B.

⁵ GE 2.

Law and 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 to be 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, 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security clearance decision.⁶ The Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁷

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." It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.⁸

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 safeguard classified information. Such decisions entail a certain degree of legally

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. DOD*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

⁸ *Egan*, 484 U.S. at 531.

permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. (EO) 10865 provides that adverse 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern 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 conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (b) a history of not meeting financial obligations; and
- (c) failure to file annual federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant incurred long-standing delinquent debts and unpaid tax obligations since 2007, and has twice filed Chapter 13 bankruptcy. He also failed to file his 2008 and 2009 federal and state tax returns when due. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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.

Despite working two full-time jobs, Applicant has struggled with debts, resulting in a foreclosure, tax liens, unfiled tax returns and two Chapter 13 bankruptcies. Although he was financially overburdened since his 2007 divorce, he withdrew from a Chapter 13 bankruptcy in 2009 because of his pride, but did not show that he resolved the delinquent debts remaining. He also filed Chapter 13 bankruptcy in 2011 and may have completed the plan, but did not show evidence of compliance with the plan or a final discharge. He has been steadily employed since 2006, yet has not shown satisfactory resolution of his debts, resolution of past-due taxes, or submission of unfiled tax returns.

Despite discussions during the hearing and ample time to provide post-hearing evidence, Applicant failed to provide documentary evidence of successful resolution of debts through the 2011 bankruptcy. Additionally, he has not shown evidence that he filed his 2008 and 2009 tax returns. His financial issues have been long-standing and remain recent and ongoing, and there is insufficient evidence of a financial track record to show similar issues are unlikely to recur. Financial counseling was presumably completed in conjunction with his bankruptcy filings, and he claimed he was receiving private financial counseling. Mitigating conditions ¶ 20(c) and (d) are partially applicable, but evidence of follow-through action is lacking. Finally, there is no evidence that Applicant's current financial condition is sound, or that financial problems are unlikely to recur.

His overall financial responsibility and willingness to comply with rules and regulations remain a concern, and his financial condition casts doubt on his current reliability, trustworthiness, and good judgment. The evidence presented fails to show that his financial difficulties are fully under control, that he is willing and able to meet his financial obligations, or that this condition is unlikely to recur in the future.

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 relevant 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 all of the potentially disqualifying and mitigating conditions in light of all the evidence in favor of and against Applicant, and the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis.

Applicant filed Chapter 13 bankruptcy to gain control over his debts and has presumably been paying pursuant to the plan, but inexplicably, he failed to follow-through despite opportunities provided after the hearing. He has not shown sufficient evidence of progress toward final discharge of the bankruptcy, or that his financial challenges are under control and are unlikely to recur in the future. Overall, the record leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c and 1.l:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Gregg A. Cervi
Administrative Judge