



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02185

Appearances

For Government: Bryan Olmos, Esq., Department Counsel

For Applicant: *Pro se*

12/13/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On November 10, 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 (EO) 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 (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on December 2, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on February 3, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on February 10, 2016. As of August 4, 2016, he had not responded. The case was assigned to me on August 23, 2016. The Government exhibits included in the FORM are admitted in evidence.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer since September 2011. He served on active duty in the U.S. military from 1998 until he was honorably discharged in January 2011. He also served in the National Guard for a period. He attended college, but he did not earn a degree. He is married without children.¹

Applicant developed financial problems after he left the military. His first job did not pay as much as he earned in the military. His wife was attending college and not working. He was unable to pay all his bills, a number of debts became delinquent, and his home was lost to foreclosure.²

The SOR alleges the foreclosure of Applicant's home and eight delinquent debts totaling \$19,281. Applicant admitted owing all the debts at one time, except three medical debts totaling \$389 (SOR ¶¶ 1.f, 1.g, and 1.h) that were paid on November 19, 2015. His mortgage loan was guaranteed by the Department of Veterans Affairs (VA). There is no evidence of a deficiency owed on the loan.³

Applicant reported a number of delinquent debts on his Questionnaire for National Security Positions (SF 86), which he submitted in August 2014. He wrote that he was in the process of filing bankruptcy. When he was interviewed for his background investigation in September 2014, he stated that he intended to resolve his financial issues through a Chapter 7 bankruptcy case. He provided his bankruptcy attorney's name, address, and telephone number.⁴

Applicant apparently never followed through with a bankruptcy case. As indicated above, he paid three medical debts on November 19, 2015. He paid one creditor \$20 on November 19, 2015. He stated that he had payment plans of \$50 per month for two debts, and \$102 per month for a third debt. The plans were to commence in December 2015. He stated that he contacted the remaining two creditors, but the payment plans "need auth[orization]."⁵ Applicant did not respond to the FORM, so it is unknown whether he continued with his payment plans.

¹ Items 3, 4.

² Items 3, 4, 6-8.

³ Items 2-4, 6-8.

⁴ Items 3, 4.

⁵ Items 2, 8.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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(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."

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 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 safeguard 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 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 *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 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; and
- (c) a history of not meeting financial obligations.

Applicant was unable or unwilling to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(b) as 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.

Applicant attributed his financial problems to not earning as much as when he was in the military. However, he has worked for his current employer since September 2011, and he only started to address his finances after the SOR was issued. The

Appeal Board has held that “it is proper for a Judge to consider that an applicant, aware of his debts, has undertaken to address them only after having been advised that his clearance is in jeopardy.” See ISCR Case No. 11-13949 at 3 (App. Bd. Sep. 5, 2013). He began payment plans on several debts and stated that he intends to resolve his debts. The Appeal Board has further 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.” 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)).

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are not applicable except as they relate to the three paid debts and the foreclosed mortgage. AG ¶ 20(b) is partially applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

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 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 this whole-person analysis.

I considered Applicant’s honorable military service. However, he has unresolved financial problems that he only began to address after the SOR was issued.

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
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraphs 1.f-1.i:	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.

Edward W. Loughran
Administrative Judge