



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02509

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel

For Applicant: *Pro se*

10/13/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On December 11, 2015, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) 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; 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 answered the SOR on January 23, 2016, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM) and it was mailed to Applicant. It was received on March 11, 2016. Applicant was afforded an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days from receipt of the FORM. Applicant did not object to the Government's evidence, which is identified as Items 1 through 5. Applicant provided documents that are marked as Applicant Exhibits (AE) A through E.¹ The Government and Applicant's documents are admitted into evidence without objection. The case was assigned to me on September 27, 2016.

Findings of Fact

Applicant did not admit or deny the allegations in the SOR, but rather provided explanations. I have assumed he denied all allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. He is a high school graduate and served in the military from 1990 to 1996 when he was honorably discharged. He has been consistently employed by the same federal contractor since 2008.²

Applicant married in 2001. He has a 15-year-old daughter from the marriage. On his August 2014 security clearance application (SCA), he lists he has a stepdaughter who is 20 years old. He does not list any other stepchildren. Applicant attributes his financial problems to medical expenses incurred in 2009 for mental health issues associated with a stepson.³

Credit Reports from September 2014 and November 2015 support the delinquent debts alleged in the SOR.⁴

Applicant was interviewed by a government investigator in October 2014. During the interview, he acknowledged that he was unable to pay the account in SOR ¶ 1.c (\$8,356), which was for a personal loan for home improvements and his spouse's medical bills. He explained to the investigator that he was going to refinance his home mortgage to pay this bill, but his wife was going to receive an inheritance, so they were waiting to see how much she would inherit before paying the debt. In his response to the FORM, Applicant indicated he received an Internal Revenue Service (IRS) form 1099-C, cancellation of debt for tax year 2014 for this debt. He indicated he filed it with his federal income tax returns.⁵

On his SCA, Applicant disclosed a collection account (SOR ¶1.a - \$10,087) for a voluntarily repossessed vehicle from 2009. During his background interview, Applicant explained that he intended to pay this account by refinancing his home mortgage or

¹ AE D are copies of the documents the Government provided to Applicant.

² Item 2.

³ Items 2, 3: Answer to the SOR.

⁴ Items 4 and 5.

⁵ Items 2, 3; AE A, C.

through his wife's prospective inheritance. The investigator provided Applicant with the name of the new collection agency that is alleged in SOR ¶ 1.a. The collection agency is also listed in the credit reports from September 2014 and December 2015, which were provided to him by the Government. In his answer to the SOR, Applicant indicated he could not find information about this account through the credit report that he retrieved so he could reach a settlement agreement. This is the same collection agency that the investigator provided to him.⁶

In his response to the FORM, Applicant indicated that this debt and the other debts alleged in SOR ¶¶ 1.b, and 1.c, did not appear on the credit report he retrieved. He then retrieved another credit report, and it was listed on the new one. In his April 2016 response to the FORM, he stated that he sent a letter to the creditor in SOR ¶ 1.a asking it to validate the debt. He admitted that this is the debt for the repossessed vehicle. The credit bureau reports reflect that the debt in SOR ¶¶ 1.a and 1.b are duplicates. The most recent credit report provided by Applicant lists the name of creditor that is alleged in SOR ¶ 1.a.⁷ I find in favor of Applicant with regards to the duplicate debt in SOR ¶ 1.b. Applicant has not resolved the debt in SOR ¶ 1.a.

The delinquent debt in SOR ¶ 1.d (\$35) is for medical services. The account was reported as delinquent in December 2010. He paid this debt in February 2016 and provided documentation.⁸

Applicant did not provide any other detailed information about what actions he took to resolve any of the alleged debts before he completed his August 2014 SCA, after his October 2014 interview with a government investigator, or before receiving the 2015 SOR. In his answer to the SOR, he stated that after his financial difficulties in 2009, he has established a pattern of timely payments for his expenses and has worked to increase his credit score through proper financial management. He further stated that he had difficulty determining the correct creditors because they were not listed on the credit report he obtained.⁹

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 used in evaluating an applicant's eligibility for access to classified information.

⁶ Items 1, 2, 3, 4, 5.

⁷ Items 1, 2, 3, 4, 5.

⁸ Items 3, 4, 5; AE A, B.

⁹ Item 1, 2, 3.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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.

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.

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.¹⁰

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant experienced financial difficulties in 2009, which resulted in delinquent debts. There is sufficient evidence to support the application of the above disqualifying conditions.

The 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, 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

¹⁰ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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.

Applicant acknowledged he had delinquent debts due to financial problems in 2009. He did not provide sufficient evidence to show he actively addressed the debts alleged in the SOR. The debt in SOR ¶ 1.c was resolved when the IRS issued him a cancelation of debt form. He has not resolved the vehicle repossession debt despite being aware of it since he returned the vehicle, or was advised it was a security concern in 2014. He did not pay the small medical debt until March 2016. Applicant provided limited specific financial information. His failure to timely address his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant indicated that his financial difficulties were due to medical expenses from 2009 incurred for a stepson. This was a condition beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant did not provide evidence of any action he may have taken from 2009 to 2014 to repay his delinquent debts. He was interviewed in 2014 and confronted with the delinquent debts. He told the investigator he was going to refinance his house or use a prospective inheritance to pay the debts in SOR ¶ 1.a and 1.c. In 2014, the IRS issued him a tax form that canceled the debt in SOR ¶ 1.c and presumably he filed the form with his federal tax returns. He did not provide evidence of any action he may have taken to resolve the debt in SOR ¶ 1.a. Applicant was also made aware of a small medical debt, but did not resolve it until March 2016. Applicant did not act responsibly in addressing his delinquent debts. AG ¶ 20(b) partially applies.

There is no evidence Applicant received financial counseling. In his answer to the SOR and response to the FORM, he stated he is in a better financial position. However, the large debt owed for the repossessed vehicle is not resolved. At this juncture, I cannot find that there are clear indications the problem is being resolved. Although the delinquent debt in SOR ¶ 1.c is resolved through an IRS cancelation of debt, I cannot find that this constitutes a good-faith effort to repay the overdue creditor. Applicant was made aware of the small medical debt during his background interview in October 2014. He did not take action to resolve it until March 2016. This also does not constitute a good-faith effort to repay his creditors. AG ¶¶ 20(c) and 20(d) do not apply. Applicant provided sufficient evidence to conclude the debt in SOR ¶ 1.b is a duplicate. AG ¶ 20(e) applies to this debt.

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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 44 years old. He has worked for a federal contractor since 2008. He experienced financial difficulties in 2009. In 2014, he was made aware that his delinquent debts were a security concern, and he indicated he intended to repay the debts. He acknowledged his financial responsibility regarding the debt associated with the repossessed vehicle, yet he has taken minimal action to resolve it. He received a cancelation of debt tax form for the other large debt. Applicant did not provide sufficient evidence to conclude he has a reliable financial track record. Applicant has failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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
Subparagraphs 1.b-1.d:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge