



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



In the matter of:)
)
) ISCR Case No. 15-02565
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

05/16/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On December 9, 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 April 6, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on June 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 June 22, 2016. Applicant did not respond to the Government's FORM. The Government's documents identified as Items 1 through 7 are admitted in evidence without objection. The case was assigned to me on April 7, 2017.

Findings of Fact

Applicant is 33 years old. He obtained his GED in July 2012. He was engaged to be married as of his November 2015 response to interrogatories, and he has a 5-year-old daughter.

From June 2005 to June 2010, Applicant worked as a machine operator for a private company. He was unemployed from July 2010 to November 2010, and February 2011 to November 2011. He worked part-time as a tire and lube technician from November 2011 to November 2012. He obtained his current job as a machinist for a federal contractor in November 2012. He has never held a DOD security clearance.

The SOR alleges five delinquent debts totaling \$6,304, delinquent state taxes of \$1,103 for tax years 2008, 2010, 2011, and 2012, and Applicant's failure to file his state income tax returns for tax years 2005 through 2010, as required. The SOR also alleges the suspension of Applicant's driver's license by a state Department of Motor Vehicles, for failure to pay court fines related to a 2004 traffic conviction, from 2004 until Applicant paid the fines in February 2012.¹

Applicant admitted all of the SOR allegations in his response to the SOR. He also admitted to them in his December 2012 Questionnaire for National Security Positions (SF 86), adopted January 25, 2013 interview with an authorized DOD investigator, and November 2015 response to interrogatories. Credit reports from January 2013, March 2015, and November 2015, verify Applicant's delinquent debts.²

SOR debt ¶ 1.a is for the voluntary repossession of a car for which Applicant cosigned. SOR debts ¶¶ 1.b through 1.e are for Applicant's outstanding medical bills. Applicant stated in his response to the SOR that he has been paying his delinquent state taxes in SOR ¶ 1.g. He provided documentation with his response to interrogatories demonstrating that since July 2014, Applicant had a payment agreement in place with a tax authority, in which \$110 monthly was automatically deducted from his bank account to resolve \$2,666 in outstanding taxes. As of October 29, 2015, Applicant made 14 payments, was scheduled to continue payments for another 25 installments, and the remaining balance due was \$1,103.46 for tax periods 2008, 2010, 2011, and 2013.³

Applicant attributes his delinquent debts, to include his state taxes, to a lack of funds. He also delayed filing his state income tax returns because of his lack of funds.

¹ Item 1.

² Items 1-7.

³ Items 1-7.

He did not file his 2005 state income tax returns because his wages were so low. He was advised that it was unnecessary for him to file his 2009 state income tax returns because he made so little that year, and he would not incur any penalties for not filing. He provided a copy of his IRS wage and income transcript for tax period December 2009, which shows that his wages totaled \$6,471, and he received \$6,035 in state unemployment compensation.

Applicant has not received credit counseling. As of his January 2013 interview with an authorized DOD investigator, Applicant indicated that he intended to enroll in payment plans with his creditors. He has not provided corroborating evidence of actions he may have taken to resolve SOR debts ¶¶ 1.a to 1.e.

Regarding SOR ¶ 1.f, Applicant has not provided documentation to show his gross income for tax period 2005, though he worked for the same company from June 2005 to June 2010, and provided a copy of his IRS wage and income transcript for tax period December 2009, as previously noted. Neither party provided evidence of the threshold number for reportable income for state income tax returns for tax years 2005 and 2009. Applicant has not provided documentation to show that he has taken action to file his state income tax returns for tax years 2006, 2007, 2008, and 2010.⁴

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,

⁴ Items 1-7.

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;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has five delinquent consumer accounts totaling \$6,304 and owes \$1,103 in delinquent state taxes. His driver’s license was suspended from 2004 until February 2012, because he failed to pay court fines related to a 2004 traffic conviction. He failed to provide documentation concerning his gross income for tax year 2005. He failed to provide evidence of the threshold number for reportable income for state

income tax returns for tax years 2005 and 2009, to support his claim that he was not required to file his state taxes for those years. He failed to file his state income tax returns for tax years 2006, 2007, 2008, and 2010. There is sufficient evidence to support the application of 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.

The suspension of Applicant's driver's license was lifted in February 2012, when Applicant paid the court fines associated with his 2004 traffic conviction. Applicant's IRS wage and income transcript for tax period December 2009 shows that Applicant's wages totaled \$6,471, and Applicant received \$6,035 in state unemployment compensation.

However, the record does not contain sufficient evidence for me to determine the amount of income Applicant earned for tax year 2005, in spite of the fact that Applicant worked for the same employer from June 2005 to June 2010. In addition, there is insufficient evidence concerning the threshold number for reportable income for state income tax returns for 2005 and 2009. Thus, I am unable to conclude that Applicant has met his burden of proving that he was not required to file his state income tax returns for tax years 2005 and 2009.

Moreover, Applicant has not provided documentation to show that he has taken action to file his state income tax returns for tax years 2006, 2007, 2008, and 2010. Aside from his state taxes in SOR ¶ 1.g, as discussed above, Applicant's remaining delinquent debts remain unresolved. There is insufficient evidence to conclude that his financial problems are unlikely to recur, and they continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant's limited income constitutes a circumstance beyond his control that contributed to Applicant's financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. Applicant provided evidence to show that he started resolving his state taxes in SOR ¶ 1.g in July 2014, before the SOR was issued. However, Applicant has not provided evidence of any actions he has taken to resolve his remaining delinquent debts or file his relevant state income tax returns. He has not received financial counseling. Applicant's financial problems are not under control. AG ¶¶ 20(b) and 20(d) partially apply, and AG ¶ 20(c) 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 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has worked his current job as a federal contractor since November 2012. He previously worked as a machine operator for a private company from June 2005 to June 2010, was unemployed from July 2010 to November 2010 and February 2011 to November 2011, and worked only part-time from November 2011 to November 2012. His limited income constitutes a circumstance beyond his control that contributed to his financial problems.

Applicant has financial delinquencies and state income tax returns that remain unresolved. His finances remain a security concern. He 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
Subparagraphs 1.a-1.f:	Against Applicant
Subparagraphs 1.g-1.h:	For Applicant

Conclusion

In light of all of the circumstances, 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.

Candace Le'i Garcia
Administrative Judge