



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02714

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

04/21/2017

Decision

KILMARTIN, Robert J., 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 March 25, 2016, the Department of Defense (DOD) issued 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 timely answered the SOR, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM) on July 15, 2016. Applicant received the FORM on July 28, 2016, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence and provided a timely response to the FORM with six attachments. Absent objection, these are collectively marked as Applicant Exhibit (AE) A and admitted into evidence. The Government's exhibits,

identified as GE 1 through 5, are admitted into evidence without objection. The case was assigned to me on March 27, 2017.

Findings of Fact

Applicant admitted 18 of the 22 allegations in the SOR. He denied the delinquent debts alleged in SOR ¶¶ 1.h, 1.m, and 1.v. Applicant claims to be unfamiliar or unaware of these three debts, and states he paid off the debt alleged in ¶1.n.¹ Applicant claims that the mortgage debt alleged in ¶1.a, was assigned to his ex-wife as part of their divorce agreement. She lived in the mortgaged home with Applicant's son. Applicant signed a quitclaim deed for that house in January 2014. She allowed it to default and go into foreclosure proceedings.² Applicant stated most of the SOR debts stemmed from his divorce. He also provided supporting information consisting of six documents, including the quitclaim deed, attached to his Response.³ 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 has taken some college courses. Applicant retired from the Army after honorable service from 1992 to 2013, including three combat tours.⁴ He is divorced from his first wife. They were married from 1992 to 2010. Applicant pays her, the mother of his two children, \$1,135 per month out of his retirement check.⁵ This has significantly reduced his monthly income. He is now separated from his second wife. They have been married from 2011, and have initiated divorce proceedings. He has been employed by a federal contractor since May 2013.⁶ Applicant reports having a previous secret security clearance since 2003 with no issues.⁷

Applicant disclosed his delinquent debts in section 26 of his July 2014 Questionnaire for National Security Positions, also known as his security clearance application (SCA). Applicant claimed to have garnishments withdrawn from his retirement check each month, for a delinquent debt owed to Defense Finance Accounting Service (DFAS).⁸ Indeed his Retiree Account Statement shows that \$445.98

¹ GE 2, Answer to SOR.

² GE 5.

³ AE A, attachments include three character reference letters; a quitclaim deed; a January 23, 2014 letter on a law firm's letterhead including a breakdown of child support payments owed; and, a two page DFAS Retiree Account statement.

⁴ AE A, two page response to FORM.

⁵ AE A, two page response to FORM.

⁶ GE 3.

⁷ GE 3 at page 38.

⁸ GE 3 at p. 41, and AE A attachments.

is deducted for the garnishment, and \$689.40 is deducted from Applicant's pay check each month for his first wife.⁹ He also disclosed a delinquent debt owed to his bank after his truck was repossessed in April 2014. He claimed to be working with his bank to arrange payments.¹⁰ He has not produced evidence of these arrangements, or payments to his bank. He also explained in section 26 that he lost \$1,100 per month in basic assistance for housing (BAH) when his wife dropped back to one class in her final semester of college. The Post 9-11 GI Bill required that she take a full course load in order to qualify for the BAH.¹¹ Applicant ascribes "a bad divorce in 2010" as the reason for his financial problems.¹²

Applicant provided three character reference letters which all attest to his honesty, reliability and work ethic. He is obviously trusted and highly respected by all members of his organization. He previously served honorably for over 20 years in the Army, including three combat tours. As he stated in his Response to the FORM, "my credit is a result of a bad divorce from 2010." However, he has now incurred more recent, significant expenses associated with his latest divorce proceedings that were ongoing at the time of his Response.

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.

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

⁹ AE A, attachments.

¹⁰ GE 3 at p. 42.

¹¹ GE 3 at p. 42.

¹² AE A, two page response to FORM.

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

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.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

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

Applicant admitted to 18 of the 22 delinquent debts alleged in the SOR. He claims to have paid SOR ¶ 1.n in full, but provided no evidence. Applicant, claims to be unaware of three of the alleged delinquent debts. They are all reflected in his credit reports. Thus, the burden is on Applicant to address them. 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 problems were largely beyond the person's control, and the individual acted responsibly under the circumstances; and
- (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.

Applicant disclosed his delinquent debts in his SCA and he expressed his intent to "put more focus and money into clearing my delinquent accounts within the next 2 - 3 months" in his response to the FORM in August 2016. Yet, Applicant has produced no evidence that he has followed through on any of this. He did produce the quitclaim deed which convinces me that SOR ¶ 1.a is a mortgage that went to his ex-wife with the house. Therefore, he has resolved the allegation at SOR ¶ 1.a. He provided no documents or evidence to show progress on payments, or mitigation regarding the other 21 delinquent debts alleged in the SOR. AG ¶¶ 20(a), 20 (b) and ¶ 20(c) do 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 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 F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant had a superb career in the Army. He is trusted and highly respected by his colleagues in his organization. His divorce(s) and child support payments, may be circumstances beyond his control. Yet, Applicant has not demonstrated that he has acted responsibly to address his resulting debts. Applicant's finances remain a security concern. There are ample indications that Applicant's financial problems are not under control. He has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a. | For Applicant |
| Subparagraphs 1.b -1.v: | 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge