



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



In the matter of:)
)
) ISCR Case No. 15-02746
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: Mark Cohen, Esq.

03/06/2017

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On January 19, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on March 24, 2016, and requested a hearing before an administrative judge. The case was assigned to me on July 15, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 21, 2016, and the hearing was convened as scheduled on October 27, 2016. The

Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. The Government's discovery letter and exhibit list were marked as hearing exhibits (HE) I and II. Applicant testified and offered exhibits (AE) A-1 through A-101, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted exhibits (AE) B-E, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 3, 2016.

Findings of Fact

Applicant admitted all the SOR allegations with explanations. These admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 51-year-old employee of a defense contractor. He has worked for this employer since December 2013. He has a bachelor's degree. He retired from the Navy after 20 years of honorable service as a lieutenant (he served 10 years as an enlisted sailor). He deployed during Operation Desert Storm. He is separated from his second wife. He has two adult children, and both of them and their families reside with his estranged wife in the family residence.¹

The SOR alleges four delinquent debts in the approximate amount of \$67,353, and a dismissed Chapter 13 bankruptcy from 2013. The debts were listed in credit reports from September 2014 and January 2016. Court records document the Chapter 13 bankruptcy case.²

Applicant attributed his financial difficulties to unemployment and underemployment from 2009 to the present, and his separation from his wife in 2016. In 2004, when he retired from the Navy, he was hired by a defense contractor for a position which paid approximately \$120,000 per year. He held that position for about five and a half years until he was laid off in 2009. He received a \$25,000 severance payment when he left this employer. He was unemployed for about four months from 2009 to early 2010. He has not been unemployed since that time. From about March 2010 until 2013, he has held several jobs, all of which paid him approximately \$40,000 to \$42,000 annually. His military retirement pay is approximately \$34,000, which he has received since 2004. His current annual income, inclusive of his military retirement, is approximately \$94,000.³

Applicant claims that after his layoff in 2009, he could not pay his obligations. He sought advice and assistance from his financial advisor. He claims he took out about \$60,000 from his retirement account, against the advice of his financial advisor, to pay

¹ Tr. at 22-29; GE 1.

² GE 2-6.

³ Tr. at 29-32, 48, 50-53; answer.

some of his debts. He failed to name these debts or supply documentation of any such payments. Several debts remained after these payments and Applicant sought counsel from a bankruptcy attorney. Applicant claims he was driven to this action because the remaining creditors would not accept partial payments. This included the debts listed in SOR ¶¶ 1.b-1.d. His 2012 Chapter 13 bankruptcy case (which included all the SOR debts) was ultimately dismissed in 2013 for failure to make payments under the plan. He did not refile after the dismissal. He took no further action to pay the outstanding debts or contact the creditors until the issuance of the SOR in January 2016. Upon the issuance of the SOR, Applicant contacted the creditor holding his second mortgage (SOR debt ¶ 1.e) and began making payments of \$210 monthly.⁴

Applicant expected his estranged wife to make payments on their first mortgage for the house where she was living. Applicant turned over his monthly military retirement payment to her for this purpose. A recent credit report showed that this mortgage was over 120 days delinquent and in arrears of more than \$8,000. At hearing, Applicant was unaware of this situation. Post-hearing, he presented evidence that he made the November 2016 payment on the mortgage modification he received on this property. Applicant believes there is about \$80,000 in equity from this house once he and his wife sell it as part of the divorce. He will use those funds to pay his remaining debts. He and his wife separated in August 2015, but neither have filed for divorce. The property has never been listed for sale. Applicant testified that he currently has between \$20,000 and \$30,000 in a retirement fund, which he said he may also use to pay the remaining SOR debts. He has received financial counseling. No budget information was provided.⁵

The status of the SOR-related debts is as follows:

SOR ¶ 1.b (charged-off credit card debt \$11,359).

Applicant indicated in his answer he would contact the creditor and set up payments. He testified that he has never contacted the creditor. The date of last payment on this account is July 2010. Applicant produced no evidence of payment, establishment of a payment plan or documented correspondence with the creditor. This debt is unresolved.⁶

SOR ¶ 1.c (credit card collection account \$6,123).

Applicant indicated in his answer he would contact the creditor and set up payments. He testified that he has never contacted the creditor. The date of last payment on this account is July 2010. Applicant produced no evidence of payment,

⁴ Tr. at GE 3.

⁵ Tr. at 40-41, 54, 57-58, 60, 66-68, 79-81; AE A-70, C-E.

⁶ Tr. 57, 64-65; answer; GE 3.

establishment of a payment plan or documented correspondence with the creditor. This debt is unresolved.⁷

SOR ¶ 1.d (credit card collection account \$6,003).

Applicant indicated in his answer. he would contact the creditor and set up payments. He testified that he has never contacted the creditor. The date of last payment on this account is July 2010. Applicant produced no evidence of payment, establishment of a payment plan or documented correspondence with the creditor. This debt is unresolved.⁸

SOR ¶ 1.e (second mortgage \$43,868).

Applicant contacted this creditor after receiving the SOR. He set up a payment plan to make \$210 monthly payments. He presented documentation showing he has made payments since January 2016 on this debt. This debt is being resolved.⁹

Character Evidence.

Applicant presented the testimony of two witnesses and offered five statements on his behalf. All universally praised Applicant for his trustworthiness, honesty, dedication to his country, and integrity. The witnesses recommended that he retain his security clearance. He also presented approximately 60 pages of military fitness reports, citations, and awards he received throughout his distinguished military career.¹⁰

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 that 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

⁷ Tr. 57, 64-65; answer; GE 3.

⁸ Tr. 57, 64-65; answer; GE 3.

⁹ Tr. at 66-67; AE B.

¹⁰ Tr. at 85-88, 91-93.

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.

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 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 about 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* Executive Order 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 as follows:

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. Two are potentially applicable in this case:

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

Applicant has four delinquent debts and a dismissed Chapter 13 bankruptcy from 2013. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are recent and multiple, and his inaction on the credit card debts shows a lack of reliability, trustworthiness, and good judgment. Although he began making payments on his second mortgage, he waited until after receiving the SOR to do so. AG ¶ 20(a) is not applicable.

Applicant's short period of unemployment in 2009, his underemployment since 2010, and his marital separation are circumstances beyond his control. After receiving the SOR, he addressed the second mortgage by establishing a payment plan. He has done nothing to address the three credit card debts. Overall, the record evidence does not support that Applicant's actions were responsible under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant received financial counseling. Given the unpaid status of all but one debt, Applicant's financial problems are not under control. Although he is making payments on one debt, the remainder are unpaid with no established repayment plan. Evidence of good-faith efforts to pay or resolve the remaining debts is lacking. AG ¶ 20(c) and ¶ 20(d) partially 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 relevant 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.

I considered Applicant's federal contractor service, his military service, including his awards and citations, the testimony of his witnesses, the favorable character statements, and the circumstances by which he became indebted. I also considered that he paid the November 2016 first mortgage even though that was his wife's obligation. However, I also considered that he has made little effort to resolve his credit card debt. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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.d:	Against Applicant
Subparagraph: 1.e:	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.

Robert E. Coacher
Administrative Judge